Supreme Court, U. S.
FILED
NOV 8 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1047

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

Petitioner

—*v.*—

DOROTHY GAUTREAUX, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED FEBRUARY 20, 1975
CERTIORARI GRANTED MAY 12, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1047

CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

Petitioner

—*v.*—

DOROTHY GAUTREAUX, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Civil Action No. 66 C 1460

DATE	FILINGS—PROCEEDINGS
8-9-66	Filed Complaint
	* * * *
11-9-66	Filed Stipulation
11-9-66	Filed Amendment to Complaint
11-9-66	Enter Order to Amend Complaint and serve summons on new defendant. AUSTIN, J.
	* * * *
12-20-66	Filed Motion of Defendant to Dismiss (to Judge Austin)
	* * * *
1-3-67	Filed Memorandum and Affidavits in support of Defendant's Motion to Dismiss (to Judge Austin)
	* * * *
2-3-67	Filed Notice of Motion
2-3-67	Filed supplemental memo in support of defendant's motion to dismiss
2-3-67	Enter order on motion of defendant, leave to file supplemental memorandum instanter in support of his motion to dismiss—Austin, J.
	* * * *
4-24-67	Filed Notice
4-24-67	Filed Defendant's second supplemental memorandum in support of motion to dismiss
	* * * *
5-9-67	Filed Motion of plaintiffs to consolidate and Memorandum of Authorities in support (to Judge Austin)
5-9-67	Filed Brief of plaintiffs in opposition to motion of defendant to dismiss (to Judge Austin)
	* * * *

DATE	FILINGS—PROCEEDINGS

6-8-67 Enter order on motion of defendant leave to file his reply memorandum and exhibits instanter by agreement with plaintiffs—Austin, J.

* * * *

6-8-67 Filed Defendants' reply memorandum and Exhibits

6-16-67 Filed Notice

6-16-67 Filed Motion of Defendant to defer the taking of certain deposition etc.

6-16-67 Motion of defendant to defer the taking by plaintiffs of the deposition of defendant's employee Marie McGuire until after the ruling by the Court on the pending motion to dismiss argued and advisement and ruling deferred until June 29, 1967-Austin, J.

6-19-67 All proceedings herein are stayed and cause is continued generally, etc.—DRAFT—Austin, J.

6-21-67 Filed Motion for leave to submit memorandum, Memorandum in support of (a) Plaintiffs' request to take deposition and (b) Plaintiffs' request for oral argument and Notice

6-21-67 Enter order leave to submit Memorandum and Advisement—Austin, J.

10-31-69 Filed Plaintiffs' motion for summary judgment and brief in support thereof

10-31-69 Enter order leave to file motion for summary judgment related motions and supporting brief instanter and for an order granting defendant until January 5, 1970 to respond thereto—Austin, J.

12-4-69 Filed Motion of Amici Curiae for leave to file brief in support of plaintiffs' Motion for Summary Judgment.

12-4-69 Leave to Lawyers Committee for Civil Rights, etc., et al. Metropolitan Housing & Planning and Urban Law Institute to file Motions for leave to file briefs as amici curiae and hearing on said motions continued to December 9, 1969. AUSTIN, J.

DATE	FILINGS—PROCEEDINGS

12-9-69 Filed Brief of Urban Law Institute, etc., et al. amici curiae in support of plaintiffs' motion for summary judgment

12-9-69 Filed Brief of Metropolitan Housing and Planning Counsel amicus curiae in support of plaintiffs' motion for summary judgment

12-9-69 Filed Brief of Lawyers Committee for Civil Rights, etc. amici curiae in support of plaintiffs' motion for summary judgment

12-9-69 Motions of Lawyers Committee for Civil Rights et al. for leave to file briefs as amici curiae granted—Austin, J.

1-8-70 Filed Defendants' answer in support of motion to dismiss and in opposition to motion for summary judgment

1-8-70 Enter order on motion of defendant leave to file instanter, without objection by plaintiffs, defendant's answer in support of his pending motion to dismiss and in opposition to plaintiffs' motion for summary judgment and supporting exhibits—Austin, J.

1-14-70 Enter order on motion of plaintiffs leave to file reply brief on or before March 2, 1970—Austin, J.

1-26-70 Filed Notice

1-26-70 Filed Index pertinent to portions of Exhibit "H" to defendant's answer to motion for summary judgment

1-26-70 Enter order on motion of defendant for leave to file instanter an index to pertinent portions of Exhibit "H" to defendant's answer to motion for summary judgment and additional pages to that exhibit—Austin, J.

* * * *

3-6-70 Filed Notice

3-6-70 Filed Motion of League of Women Voters of Illinois to join as Amicus Curiae

DATE	FILINGS—PROCEEDINGS

3-6-70 Enter order motion of League of Women Voters of Illinois to join amicus curiae brief of Metropolitan Housing and Planning Council granted—DRAFT—Austin, J.

3-13-70 Filed Motion of Leadership Council for Metropolitan Open Communities to join as Amicus Curiae

3-13-70 Enter order leave to join Amicus in Brief submitted by Metropolitan Housing & Planning Council—DRAFT—Austin, J.

3-13-70 Filed Notice of Motion

3-13-70 Filed Motion of Urban Affairs Committee for leave to file brief

3-13-70 Enter order leave to file amicus curiae brief on behalf of Urban Affairs Committee Chicago Bar Association and leave to defendant to respond in 10-days—Austin, J.

3-13-70 Filed Plaintiffs' Reply Brief in support of Motion for Summary Judgment

3-13-70 Filed Brief of Urban Affairs Committee as amicus curiae in support of the constitutional rights asserted by plaintiffs

4-15-70 Filed Notice of Motion

4-15-70 Order motion of defendant Romney for leave to file instanter additional Affidavit of Don Morrow in support of defendant's motion to dismiss and its reply brief to brief of amicus, Chicago Bar Association, entered and continued to April 30, 1970 before Judge Austin—Robson, J.

* * * *

4-30-70 Filed Affidavit of Don Morrow in support of defendant's motion to dismiss

4-30-70 Filed Reply of defendant to amicus curiae Brief filed by Urban Affairs Committee, Chicago Bar Assn.

DATE	FILINGS—PROCEEDINGS

5-5-70 Filed Plaintiffs' Brief responding to Reply of Defendant to Brief

6-12-70 Filed notice.

6-12-70 Filed affidavit of Don Morrow in further support of motion to dismiss and/or for summary judgment.

6-12-70 Enter order on motion defendant leave to file instanter third affidavit of Don Morrow in further support of defendant's pending motion to dismiss or for summary judgment.—Austin, J.

9-1-70 Filed memorandum.

9-1-70 Pursuant to the Court's memo filed this day defendant's motion to dismiss is sustained and the complaint is dismissed.—Austin, J.

10-21-70 For the reasons given in the Court's memo dated September 1, 1970, this action is dismissed—DRAFT—Austin, J.

10-29-70 Filed Notice of Appeal by Plaintiffs

10-29-70 Delivered copy of Notice of Appeal to U.S. Attorney

* * * *

1-6-71 Filed Request for complete Record

1-27-71 Transmitted Complete Record on Appeal to U.S.C.A. (Items 20 and 52 of Index transmitted unbound for convenience)

9-17-71 Filed motion of plaintiffs' pursuant to Rule 62(c) of the Rules of Civil Procedure for the U.S. District Court and Rule 8(a) of the Federal Rules of Appellate Procedure for an order to preserve the status quo pending a hearing.

9-17-71 Cause continued to September 21, 1971, for hearing on plaintiffs' motion filed September 17, 1971.—Austin, J.

9-20-71 Filed memorandum in opposition to plaintiffs' motion pursuant to Rule 62(c) FRCP and Rule 8(a) FRAP for an order to preserve the status quo pending a hearing.

DATE	FILINGS—PROCEEDINGS

9-20-71 Filed Motion of City of Chicago for leave to intervene with respect to plaintiffs' motion for an order to preserve the status quo pending hearing.

9-20-71 Filed affidavit of Erwin A. France

9-20-71 Filed objections of City of Chicago to plaintiffs' motion to preserve status quo pending hearing.

9-20-71 Filed memorandum of Chicago Housing Authority in opposition to plaintiffs' Rule 62(c) motion for injunction.

9-20-71 Filed government's objections to plaintiffs' motion to preserve status quo pending hearing.

9-21-71 Filed City of Chicago's notice of filing.

9-21-71 Filed petition of Central Advisory council to intervene.

9-21-71 Motion of Central Advisory Council for leave to intervene herein as party defendant is granted.—Austin, J.

9-20-71 Filed objections of Sec. of H.U.D. to plaintiffs' motion pursuant to Rule 62(C) F.R.C.P. and Rule 8(a) FRAP for an order to preserve the status quo pending a hearing.

* * * *

9-21-71 Opening statement heard. Plaintiffs' evidence heard in part—Hearing adjourned to September 22, 1971.—Leave to Attorney Kenneth K. Howell to participate in this hearing under certain restrictions.—Austin, J.

9-22-71 Further evidence heard for plaintiffs—plaintiffs rest—Motion of defendants for finding taken under advisement—Defendants' evidence heard in part—Hearing adjourned to September 23, 1971.—Austin, J.

9-23-71 Further evidence heard for defendants—Defendant City of Chicago rests.—Motion of defendant City of Chicago to strike taken under advisement. Further evidence heard for co-defendants—Hearing adjourned to September 24, 1971.—Austin, J.

DATE	FILINGS—PROCEEDINGS

9-24-71 Filed Affidavits submitted by CHA in opposition to plaintiffs' Rule 62(c) Motion for injunction. Affidavits of Harry J. Schneider, Barbara Bell and Thomas L. Flemming.

9-24-71 Further evidence heard for defendants—Government rests—Further evidence heard for defendants.—Defendant C.H.A. rests—Further evidence heard for defendants—Chicago Advisory Council rests—All parties rest—Arguments heard and concluded—Cause taken under advisement—Decision deferred to October 1, 1971, at 10 a.m. Leave to C.H.A. and City of Chicago to intervene as parties defendant for the purpose of this hearing. —Austin, J.

10-1-71 Filed Government's memorandum in opposition to plaintiffs' motion for consolidation. (Filed in 71 C 2291)

10-1-71 Filed Memorandum opinion of Judge Austin

10-1-71 Enter injunction order (DRAFT)—Austin, J.

10-7-71 Clerk's File Copy of transcript of proceedings had before Judge Austin on September 21, 22, 23, 24 and October 1, 1971, filed by Official Court Reporter. (5 vols)

10-12-71 Filed plaintiffs' exhibits 1—16; HUD exhibit 1; CHA exhibits 1, 2, 4-7; City of Chicago exhibits 1, 2, 3.

10-13-71 Filed notice of appeal by City of Chicago, intervenor.

10-13-71 Filed notice of appeal by Central Advisory Council, intervenor.

10-13-71 Filed notice of appeal by Chicago Housing Authority, intervenor.

10-13-71 Mailed copies of notices of appeals to attorneys of record.

10-13-71 Filed designation of record on appeal by City of Chicago.

DATE	FILINGS—PROCEEDINGS

10-13-71 Certified and transmitted to U.S.C.A., 7th Circuit, complete record on appeal (from 9-17-71 to 10-13-71) consisting of one volume of pleadings, and under separate certificate 5 volumes of transcripts of proceedings and one envelope of exhibits.

10-22-71 Clerk's File Copy of transcript of proceedings had before Judge Austin on September 17, 1971, filed by Official Court Reporter.

10-26-71 Transmitted supplement to record on appeal transmitted on October 13, 1971. (Transcript of proceedings had on September 17, 1971)

11-1-71 Filed certified copy of order from U.S.C.A. to wit: IT IS ORDERED by the Court that said emergency motion be and the same is hereby denied. IT IS FURTHER ORDERED that this appeal be expedited. Intervenors-appellants' briefs shall be filed on or before November 12, 1971, plaintiffs-appellees' brief shall be filed on or before November 26, 1971, and intervenors-appellants' reply brief shall be filed on or before December 8, 1971. IT IS FURTHER ORDERED these appeals be set down for oral argument on Friday, December 10, 1971.

11-11-71 Filed Plaintiffs' motion for order pending final judgment.

11-11-71 Enter Order (DRAFT) pending Final Judgment.—Austin, J.

11-11-71 Leave to Chicago Housing Authority, City of Chicago and Central Advisory Council to intervene herein and said intervention is limited to Count 2 of the complaint.—Austin, J.

11-11-71 Filed Opinion

DATE	FILINGS—PROCEEDINGS

11-11-71 Filed Mandate U.S.C.A. order entered on October 21, 1970, U.S.D.C. is hereby REMANDED. It is further ordered that each party to this appeal shall pay their own costs. and AFTERWARDS TO WIT, an order was entered on November 11, 1971, directing that the mandate issue forthwith to the U.S.D.C.

11-11-71 Received record on appeal from U.S.C.A., 7th Circuit (1 volume pleadings, 1 vol. Memorandum and affidavits.)

11-11-71 Filed certified copy of order from U.S.C.A. to wit: IT IS ORDERED that the objections to the motion to issue mandate be overuled and that the order of this Court heretofore entered on November 2, 1971, be terminated and the Clerk is authorized and directed to issue the mandate forthwith.

11-12-71 Filed Notice of Appeal by City of Chicago.

11-21-71 Mailed copy of Notice of Appeal to Alexander Polikoff and U. S. Attorney

11-12-71 Filed Designation for Short Record

11-12-71 Transmitted Short Record on Appeal to U.S.C.A. consisting of Two (2) Orders entered 11-11-71 and Notice of Appeal filed 11-12-71. Designation for short record and docket entries

11-12-71 Mailed copy of letter and certificate to Alexander Polikoff and Richard L. Curry.

11-23-71 Filed Government's memorandum in support of motion to consolidate and motion to alter or amend the judgment order entered November 11, 1971.

11-24-71 Filed Government's notice of motion

11-24-71 Paragraph 5 of defendant's motion to alter or amend the Court's order entered November 11, 1971 is withdrawn—Paragraph 6 of said motion is denied—Paragraphs 1 thru 4 of said motion are denied.—Austin, J.

DATE	FILINGS—PROCEEDINGS

11-24-71 Filed Plaintiffs' Motion for further relief.

11-24-71 Filed Government's Notice

11-24-71 There being no objection by plaintiffs or by defendants the government's motion to consolidate cases 66 C 1469 and 66 C 1460 is granted.—Austin, J.

11-26-71 Enter order consolidating cases numbered 6 C 1459 and 66 C 1460. (DRAFT)—Austin, J.

11-26-71 Enter order requiring defendant Romney to file certain response and memorandum (DRAFT)—Austin, J.

12-1-71 Filed supplemental memorandum in support of plaintiffs' motion for further relief against the Chicago Housing Authority.

12-2-71 Filed Government's Notice of Appeal
Mailed copies of Notice of Appeal to Alexander Polikoff, Richard L. Curry, H. Ernest Lafontant, Patrick W. O'Brien

12-17-71 Filed Government's notice

12-17-71 Filed Government's motion for leave of court to file its memorandum in opposition to plaintiffs' motion for further relief instanter.

12-17-71 Filed Memorandum in opposition to plaintiffs' motion to require defendant to propose comprehensive plans, etc.

12-17-71 Motion for leave of court for defendant, George W. Romney, to file his memorandum in opposition to plaintiffs' motion for further relief instanter, granted (DRAFT) Consolidated cause continued to December 23, 1971, for hearing.—Austin, J.

12-21-71 Filed Memorandum of Chicago Housing Authority in answer to Plaintiffs' motion for further relief as to CHA, Affidavit of C. E. Humphrey, in support of memorandum of Chicago Housing Authority in answer to Plaintiffs' motion for further relief as to CHA. Exhibit A.

DATE	FILINGS—PROCEEDINGS

12-23-71 Arguments heard—Enter order requiring the parties to attempt to formulate a comprehensive plan, etc. (DRAFT)—Austin, J.

12-28-71 Clerk's file copy of transcript of proceedings had on November 11, 1971, before Judge Richard B. Austin filed by the Official Court Reporter.

12-28-71 Clerk's file copy of Transcript of Proceedings had on November 24, 1971, before Judge Austin filed by the Official Court Reporter.

12-29-71 Filed Plaintiffs' notice

12-29-71 Filed Reply memorandum in support of plaintiffs' motion for further relief against CHA.

12-30-71 Filed Report No. 3 to the Court pursuant to order of April 16, 1971.

1-3-72 Arguments heard—Enter order requiring CHA to file certain plans on or before certain dates and setting hearing on each of said plans. (DRAFT)—Austin, J. See draft for particulars

1-18-72 Filed Response of CHA to Part I of the order entered upon CHA on January 3, 1972, with attachments 1 and 2

2-2-72 Filed Plaintiffs' motion to add parties defendant and to file supplemental complaint.

2-2-72 Filed supplemental complaint

2-2-72 Leave to plaintiffs to file supplemental complaint adding parties defendant, etc. (DRAFT)—Austin, J.

2-2-72 No hearing on consideration of Plan No. 1—no Order. —Austin, J.

2-2-72 Issued 50 summons and 50 copies with 50 copies of supplemental complaint and order to Attorney for special process (Henry McMorris—Appointed) per order of above.

DATE	FILINGS—PROCEEDINGS

2-16-72 Filed Answer of CHA to supplemental complaint (in 66 C 1459)

* * * *

2-22-72 Filed answer of George W. Romney, Secretary of Housing and Urban Development, defendant to supplemental complaint.

2-22-72 Filed Appearance of William Cousins, Jr., Leon M. Despres, Anna R. Langford, Dick Simpson and William S. Singer, as defendants and that of Alex Elson, as attorney.

* * * *

2-22-72 Filed answer of Defendants, William Cousins, Jr., Leon M. Despres, Anna R. Langford, Dick Simpson and William S. Singer, to supplemental complaint.

2-22-72 Filed Notice of filing answer of the City of Chicago and Richard J. Daley with exhibits attached.

2-22-72 Filed answer of defendants, City of Chicago and Richard J. Daley, to supplemental complaint with exhibits A, B and C attached.

2-22-72 Filed Exhibit D to defendant, City of Chicago's answer. (Above items in 66 C 1459)

* * * *

2-23-72 Filed appearance of Claude W. B. Holman, Jimmy L. Washington, David Rhodes, Eugene Ray and Robert Biggs, as defendants and attorney.

* * * *

2-23-72 Filed appearance of Robert S. Fiffer, Allan N. Lasky and Joel L. Widman, as attorneys for Paul T. Wigoda, defendant.

* * * *

2-23-72 Filed appearance pro se of Marilou Hedlund.

2-23-72 Filed appearance of Jack I. Sperling and attorney

2-23-72 Filed Defendant Jack I. Sperling's notice of motion; Motion to dismiss and copy.

DATE	FILINGS—PROCEEDINGS

2-23-72 Filed Defendants Claude W. B. Holman, Jimmy L. Washington, David Rhodes, Eugene Ray and Robert Biggs' notice of motion; Motion to dismiss and copy.

2-23-72 Filed Defendant Michael Bilandic's notice of motion; Motion to dismiss.

2-25-72 Filed appearance of Michael Bilandic as defendant and attorney

2-28-72 Filed appearance of defendants, Edwin P. Fifielski and Thomas F. Patrick and that of their attorney, with Affidavit under Rule 39.

2-28-72 Filed Answer of defendants, Edwin P. Fifielski and Thomas F. Fitzpatrick

2-28-72 Filed defendants, Jack I. Sperling and Michael Bilandic's Motion to Dismiss and Notice of Motion.

2-28-72 Filed defendants, Jack I. Sperling and Michael Bilandic's Notice of Motion, Memorandum in support of Motion to Dismiss. (above items filed 2-28-72 located in 66 C 1459)

3-3-72 Filed Motion of Seymour Simon for leave to appear pro se and to file answer to supplemental complaint.

3-3-72 Filed answer of Defendant Seymour Simon to supplemental complaint.

3-3-72 Enter order leave for Seymour Simon to appear pro se and file answer to the supplemental complaint in the above cause instanter.—Austin, J.

3-3-72 Filed answer of Defendants Wilson Frost, William H. Shannon, Tyrone T. Kenner, Eugene Sawyer, Clifford P. Kelley and Bennett M. Stewart.
(all further documents entered on 66 C 1459—consolidated with above case.)

DATE	FILINGS—PROCEEDINGS

5-4-72 Filed opinion

5-4-72 Filed Mandate: U.S.C.A. 7th Circuit—It is ordered and adjudged that these appeals from the order of District Court entered on October 1, 1971, are hereby dismissed, with costs for reason of mootness and afterwards to wit, a petition for rehearing en banc filed on March 22, 1972; on April 26, 1972, an order was entered denying the petition for rehearing en banc. Re appeal by Chicago Housing Authority, intervening Defendant-Appellant

5-4-72 Filed Opinion

5-4-72 Filed Mandate: U.S.C.A. 7th Circuit—Re appeal by the City of Chicago Intervenor-Defendant; It is ordered and adjudged by this Court that these apepals from the order of the said District Court entered therein on October 1, 1972, be and the same are hereby dismissed, with costs, for reason of mootness, and afterwards to wit, a petition for rehearing en banc was filed on March 22, 1972; on April 26, 1972, an order was entered denying the petition for rehearing en banc.

5-4-72 Filed Opinion

5-4-72 Filed Mandate: U.S.C.A. 7th Circuit: re Appeal by Central Advisory Council, Intervening Defendant-Appellant; It is ordered that these appeals from the order of said District Court entered on October 1, 1971 be and the same are hereby dismissed, with costs, for reason of mootness, and afterwards to wit, a petition for rehearing en banc was filed on March 22, 1972; on April 26, 1972, an order was entered denying the petition for rehearing en banc.
Re: orders entered 10/1/71, 10/1/71 and 9/10/71.

5-4-72 Received complete record from U.S.C.A. consisting of 1 vol. of pleadings, 5 vol. transcripts and 1 folder of exhibits.

5-4-72 Filed opinion

DATE	FILINGS—PROCEEDINGS

5-4-72 Filed Mandate: U.S.C.A., 7th circuit re appeal by the City of Chicago, the Central Advisory Counsel and the Chicago Housing Authority, intervenor-Defendants-Appellants. It is ordered and adjudged that the judgment of said District Court in this cause appealed from be, and the same is hereby reversed, with costs, and this cause be and the same is hereby remanded to the said District Court for proceedings not inconsistent with the opinion of this Court filed this day, and afterwards to wit, a petition for rehearing en banc was filed on March 22, 1972; on April 26, 1972 an order was entered denying the petition for rehearing en banc and further that City of Chicago, Central Advisory Council & CHA, intervenor Defendants-Appellants recover against the Dorothy Gautreaux, et al., plaintiff-Appellees the sum of $25.00 for their cost. (Re: order entered on 11/11/71)

5-4-72 Received short record on appeal from U.S.C.A. 7th Circuit.

5-10-72 Filed Notice of Appeal by Richard L. Curry, Corporation Counsel for 40 defendants.

5-10-72 Filed Notice of Appeal by Richard L. Curry, Corporation counsel, for City of Chicago, and Mayor Daley.

5-10-72 Filed Notice of Appeal by Lawrence Hickey, Attorney for Edward R. Vrdolyak.

5-11-72 Mailed copies of docket sheets and notice of appeal to all attorneys of record.

5-25-72 Transmitted short emergency record consisting of docket entries, notices of appeal from City Chicago, et al. and certain defendants (2) and orders of April 10, 1972, and April 20, 1972.

5-26-72 Filed certified copy of order from U.S.C.A., 7th Circuit: It is ordered that said motion to suspend the order of April 10, 1972, be and the same is hereby denied.

6-1-72 Filed documents pursuant to order of Court, May 8, 1972. List of sites.

DATE	FILINGS—PROCEEDINGS

6-19-72 Filed documents pursuant to order of April 10, 1972. List of sites.

* * * *

8-3-72 Clerk's file copy of transcript of proceedings had on May 28, 1972, before Judge Austin, filed by an official court reporter.

8-7-72 Filed Chicago Housing Authority's filing of documents pursuant to order of Court.

8-11-72 Filed Notice by U.S. Attorney

8-11-72 Filed Petition by U.S. Attorney

8-11-72 Enter order petition to transfer case No. 72 C 1197 to the Executive Committee in accordance with rule 10 B 4 (c) (ii) so that said case can be placed on the calendar of the Honorable Richard B. Austin entered and continued to September 11, 1972, at 10 a.m. before Judge Hoffman.

9-25-72 Filed Plaintiffs' proposed judgment order and memorandum.

10-5-72 Clerk's file copy of transcript of proceedings had on July 24, 1972, and August 7, 1972, before Judge Austin, filed by an official court reporter. (2 volumes)

10-6-72 Filed Report No. 6 to the Court pursuant to order of April 16, 1971.

* * * *

11-17-72 Filed Answer to Interrogatories by Martin Rogan, Deputy Director, Chicago Area Office

11-27-72 Opening statements heard. Plaintiffs' evidence heard in part. Hearing adjourned to November 28, 1972. AUSTIN, J.

11-28-72 Further evidence heard for plaintiffs. Hearing adjourned to November 29, 1972. AUSTIN, J.

DATE	FILINGS—PROCEEDINGS

11-29-72 Further evidence heard. Parties rest. Arguments heard and concluded Advisement. Leave to plaintiffs to present proposed findings of fact and conclusions of law in 30 days. Leave to the parties to file any memoranda they desire to file in 30 days. Leave to C.H.A. to file any responses to anything filed by any of the other parties in 5 days after said filing. AUSTIN, J.

12-7-72 Clerk's file copy of transcript of proceedings had on September 28 and 29, 1972, October 11 and 12, 1972, before Judge Austin, filed by an official court reporter. 3 volumes

* * * *

12-29-72 Filed report No. 7 to the Court pursuant to order of April 16, 1971, by defendants.

1-29-73 Filed Plaintiffs' motion to defer ruling on certain proposed final judgment orders, etc., and brief in support thereof

2-1-73 Enter order on motion of CHA order allowing it to file its written response to the various papers filed by plaintiffs and HUD under this Court's order of November 29, 1972, within five days after HUD files its papers under said order. AUSTIN, J.

* * * *

3-30-73 Filed Memorandum in opposition to plaintiffs' motion for a ruling on the propriety of considering metropolitan relief and in support of the entry of federal defendants' proposed judgment order.

3-30-73 Filed Report No. 8 to the Court pursuant to order of April 16, 1971.

4-4-73 Filed Notice of Motion

4-4-73 Filed Motion

4-4-73 Enter order on defendant's motion, leave to substitute defendant Schneider as Executive Director of Chicago Housing Authority. AUSTIN, J.

DATE	FILINGS—PROCEEDINGS

4-4-73 Filed Notice

4-4-73 Filed Motion

4-4-73 Enter order on motion of defendant James T. Lynn, Secretary of the Department of Housing and Urban Development, leave of Court to file his memorandum in opposition to plaintiffs' motion for a ruling on the propriety of considering metropolitan relief and in support of the entry of federal defendant's proposed judgment order, which is 16 pages in length, and said motion entered nunc pro tunc as of March 30, 1973 (DRAFT) AUSTIN, J.

4-18-73 Clerk's file copy of transcript of proceedings had on November 27, 1972, November 28, 1972, November 29, 1972, and February 2, 1973, before Judge Austin, filed by an official court reporter. 4 volumes

* * * *

4-30-73 Filed reply to HUD memo in opposition to plaintiffs' motion for a ruling.

6-29-73 Filed Report No. 9 to the Court pursuant to order of April 16, 1971 submitted by Harry J. Schneider.

6-8-73 Filed Mandate from the U.S. Court of Appeals, judgment returned Affirmed.

6-8-73 Filed Opinion.

6-8-73 Received letter from the U.S.C.A. stating that the record will be returned upon completion of companion cases.

* * * *

7-30-73 Received the following from the U.S. Court of Appeals, 1 volume of pleadings, 1 envelope exhibits, short record and physical exhibits.

8-1-73 Received the following from the U.S. Court of Appeals; 4 volumes of transcripts and 1 Binder of data sheets.

DATE	FILINGS—PROCEEDINGS

9-11-73 Motion of plaintiffs to consider metropolitan relief is denied and motion to defer ruling on proposed final judgment orders, etc., denied. Plaintiffs' motion for summary judgment on Counts I and II of complaint in 66 C 1460 is granted. Enter permanent injunction against defendant George W. Romney, etc., et al. (DRAFT) AUSTIN, J.

10-1-73 Filed notice of filing; Report No. 10 to the Court pursuant to order of April 16, 1971.

11-9-73 Filed Notice of Appeal by the Plaintiffs.

11-13-73 Filed Notice of (Cross) Appeal by the United States Attorney.

11-23-73 Mailed copy of the notice of appeal (both appeals mailed) to all the parties of record.

11-16-73 Received the answer of defendant from the U.S. Court of Appeals. (1 volume)

12-7-73 Filed Designation for Complete Record on Appeal.

* * * *

1-14-74 Certified and transmitted to the U.S.C.A.—7th Circuit, the complete record on appeal. Together with 9 volumes of transcripts of proceedings.

1-14-74 Mailed copies of the appeals list to all attorneys of record.

1-2-74 Filed Notice of Filing with CHA Report #11 to the Court filed Pursuant to Order of April 16, 1971. (in 66 C 1459)

2-14-74 Filed Plaintiffs' motion to require defendants to report to court.

2-14-74 Motion for order to report to court taken under advisement-Leave to the defendants to respond in 30 days and cause is continued to March 14, 1974 for hearing. Austin, J. (in 66 C 1459)

* * * *

DATE	FILINGS—PROCEEDINGS

4-1-74 Filed notice of filing with CHA #12 to the Court filed pursuant to order of April 16, 1971. (in 66 C 1459)

4-2-74 Plaintiffs' motion for order on defendant to report taken under advisement. Leave to the plaintiffs to file supporting brief in 7 days and leave to the defendant to file responses thereto in 15 days thereafter and leave to the plaintiffs to reply in 5 days thereafter. Cause continued to May 10, 1974, for status report. Austin, J. (in 66 C 1459)

4-8-74 Filed brief in support of plaintiffs' motion for hearing.

4-23-74 Filed defendant's brief in opposition to the plaintiffs' motion for hearing.

5-1-74 Filed defendant's notice of motion.

5-1-74 Filed defendant's motion for leave to file rejoinder to the plaintiffs' reply, instanter.

5-1-74 Federal defendant's motion for leave to file rejoinder to the plaintiffs' reply instanter, granted. Austin, J.

5-1-74 Filed federal defendant's rejoinder in opposition of the plaintiffs' motion for hearing. (all the above in 66 C 1459)

5-6-74 For reasons of judicial economy and expediency and to avoid delays, plaintiffs' motion for a hearing is denied. Plaintiffs are granted 45 days in which to conduct discovery relative to the issued raised in the motion for a hearing. Plaintiffs are granted 20 days thereafter to file motions or other papers. Defendants are granted 20 days thereafter to answer. Plaintiffs are granted an additional 10 days to reply to the defendants' answer. This matter is taken off the status report for May 10, 1974, and set for ruling and/or status report on the September passed case calendar. Austin, J. (in 66 C 1459)

5-23-74 Filed defendant's notice of motion.

DATE	FILINGS—PROCEEDINGS

5-23-74 Filed defendant's motion to quash notice of deposition.

5-23-74 Federal defendant's motion to quash notice of deposition argued and denied. Austin, J.

7-1-74 Filed notice of filing with Report No. 13 to the Court re CHA activities.

7-12-74 Filed Plaintiffs' report to the Court pursuant to order of May 6, 1974.

7-31-74 Filed federal defendant's response to the plaintiffs' report pursuant to order of May 6, 1974. (in 66 C 1459)

* * * *

9-11-74 Enter order dated September 10, 1974: Leave to plaintiffs to tender proposed order September 11, 1974, and leave to defendants to file Objections thereto on or before September 23, 1974. Austin, J.

9-23-74 Filed Federal Defendant's response and objections to plaintiffs' proposed order submitted pursuant to Court's order of September 10, 1974 (in 66 C 1459)

9-30-74 Filed notice of filing with Report #14 to the Court pursuant to order of April 16, 1971 attached.

10-8-74 Enter order dated October 7, 1974: The parties are granted until October 23, 1974, to endeavor to agree upon an order expediting their performance of the July 1, 1969, order, to file additional names of proposed commissioners, or each to file a proposed new order with briefs in support thereof. Hearing is set for November 1, 1974: Austin, J.

10-8-74 Filed opinion.

10-8-74 Filed certified from U.S.C.A.—7th Circuit: dated August 26, 1974, cause is reversed with costs and remanded to district court for further consideration.

10-8-74 Filed order from the U.S.C.A.—7th Circuit: dated September 30, 1974: Order that the petition of appellees for rehearing is DENIED.

DATE	FILINGS—PROCEEDINGS

10-8-74 Received complete record from U.S.C.A. (all documents).
(all the above in 66 C 1459)

* * * *

11-5-74 Filed appearance of Chicago Housing Authority and that of its counsel Steven M. Rasher of Mayer, Brown & Platt (In 66 C 1459)

* * * *

11-5-74 Filed Plaintiffs' comments on proposed order of reference (In 66 C 1459)

11-7-74 Enter order dated 11-6-74: Argument heard and cause taken under advisement.—AUSTIN, J (In 66 C 1459)

11-7-74 Enter order dated 11-7-74: Plaintiffs' motion to appoint a commissioner granted as modified. Matter referred to a Master-Magistrate according to the rules. (Draft)—AUSTIN, J. (to Magistrate JURCO) (in 66 C 1459)

11-21-74 Enter Order dated November 19, 1974: Status report held. Set for pretrial conference Tuesday, November 26, 1974, at 2:30 p.m.—Jurco, Magistrate

12-31-74 Filed notice of filing with Report #15 to the Court on CHA activities attached.

2-7-75 Filed plaintiffs' notice.

2-7-75 Filed plaintiffs' motion to add parties defendant and to file supplemental complaint; second supplemental complaint.

2-7-75 Filed plaintiffs' motion to modify order of reference.

2-12-75 Enter order dated February 7, 1975; Motion to modify order of reference and motion to add parties defendant and to file supplemental complaint taken under advisement. Cause continued to February 13, 1975, for a status report with regard to motion to modify order of reference and status report with regard to motion to file supplemental complaint scheduled for February 24, 1975.—AUSTIN, J. (in 66 C 1459)

DATE	FILINGS—PROCEEDINGS

2-24-75 Filed defendant Chicago Housing Authority's motion to vacate reference order of November 7, 1974.

2-24-75 Filed plaintiffs' notice to add parties defendant and to file supplemental complaint and plaintiffs' motion to modify order of reference.

2-25-75 Enter order dated February 24, 1975; Motion to modify reference to magistrate and motion to vacate said reference denied. Plaintiffs' motion for leave to file supplemental complaint granted and leave to answer or plead to same in 30 days. (Draft)—AUSTIN, J.

3-5-75 Issued fourteen summons and fourteen copies with fourteen copies of complaint.

2-4-75 Filed Opinion from the United States Court of Appeals denying petition for writ of mandamus.

3-19-75 Filed summons returned served as to Frank A. Kirk, Illinois Housing Development Authority, Housing Authority of Cook County and Dupage County Housing Authority. (4 returns)

3-21-75 Filed appearance of counsel for defendant Housing Authority of the County of Cook; affidavit Larry Selander, James T. Otis and Kenneth R. Mischner (3 affidavits)

3-26-75 Filed answer of defendant James T. Lynn, Secretary of Housing and Urban Development to plaintiffs' second supplemental complaint.

3-26-75 Filed summons returned served as to Housing Authority of North Chicago, Waukegan Housing Authority and Housing Authority of the County of Lake. (3 returns)

3-26-75 Filed appearance of counsel for defendant Illinois Housing Development Authority.

3-26-75 Filed answer of Chicago Housing Authority and Harry B. Schneider to second supplemental complaint.

* * * *

DATE	FILINGS—PROCEEDINGS

3-31-75 Filed notice of filing; report no. 16 to the Court pursuant to order of April 16, 1971.

* * * *

4-3-75 Filed appearance of counsel for defendant Waukegan Housing Authority.

4-3-75 Filed appearance of counsel for defendant Housing Authority of the City of North Chicago.

4-3-75 Filed appearance of counsel for defendant Housing Authority of the County of Lake.

4-10-75 Issued summons and one copy with one copy of complaint (second supplemental) as to Maywood Housing Authority.

4-9-75 Filed summons returned served as to Housing Authority of the Village of Oak Park, Aurora Land Clearance Commission and Housing Authority of Elgin. (3 returns)

4-9-75 Filed summons returned unexecuted as to Maywood Housing Authority.

* * * *

4-18-75 Filed Notice of filing appearance on behalf of defendant, Housing Authority of the Village of Oak Park.

4-18-75 Filed appearance of the Housing Authority of the Village of Oak Park, and that of Klein, Thorpe, Kasson and Jenkins as attorneys with affidavit of Patrick A. Lucansky, pursuant to General Rule 39.

* * * *

4-23-75 Filed summons returned served as to Maywood Housing Authority and Housing Authority of Joliet. (2)

4-24-75 Filed answer of Aurora Land Clearance Commission to second supplemental complaint.

* * * *

DATE	FILINGS—PROCEEDINGS

5-5-75 Filed answer of Housing Authority of the City of North Chicago to the second supplemental complaint.

* * * *

5-6-75 Filed Recommendation of Master.

5-8-75 Enter order dated May 5, 1975; The judgment order entered herein on September 11, 1973, and the judgment order entered on July 1, 1969, as amended, shall not be interpreted to preclude Housing and Urban Development from approving a Housing Assistance Plan filed with it by the City of Chicago pursuant to the Housing and Community Development Act of 1974. (see draft for full particulars) (Draft)—AUSTIN, J.

5-7-75 Filed answer of the Housing Authority of the Village of Oak Park to second supplemental complaint.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Civil Action No. 66 C 1460]

[Filed August 9, 1966]

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA JOHNSON, JAMES RODGERS AND ROBERT M. FAIRFAX, PLAINTIFFS

v.

THE HOUSING ASSISTANCE ADMINISTRATION, A Corporate Agency of the Department of Housing and Urban Development, DEFENDANT

COMPLAINT

COUNT I

1. Jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. § 1331. This is an action in equity seeking declaratory relief under Title 28, U.S.C. §§ 2201 and 2202 and an injunction. The rights sought to be secured in this action are rights guaranteed by the due process clause of the Fifth Amendment to the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the value of $10,000.

2. This is a proceeding for a declaration that the defendant has assisted in the carrying on and continues to assist in the carrying on of a racially discriminatory public housing system within the City of Chicago, Illinois, for a permanent injunction enjoining the defendant from continuing to assist in the carrying on of the racially discriminatory aspects of such public housing system in the future, and for other appropriate relief.

3. Plaintiffs are all Negro citizens of the United States who presently reside in the City of Chicago, Illinois, and are tenants in "regular family" public housing projects (i.e., projects for persons other than the elderly) operated by the Chicago Housing Authority (the "Authority"), or have filed, on forms provided for by the Authority, written applications for and are eligible to be housed in, and have a right in accordance with Authority Rules to be housed in, such projects.

4. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their behalf and on behalf of all other Negro tenants and applicants similarly situated. The members of the class on whose behalf this suit is brought are so numerous that joinder of all members is impracticable. There are questions of law and fact involved common to the class, the claims of the plaintiffs as representative parties are typical of the claims of the class, and the plaintiffs as representative parties will fairly and adequately protect the interests of the class. The prosecution of separate actions by individual members of the class would create a risk of (A) inconsistent or varying adjudication with respect to individual members of the class which would establish incompatible standards of conduct for the defendants, and (B) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests. Defendant has acted, in all respects stated herein, on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

5. Defendant, the Housing Assistance Administration, is a corporate agency and instrumentality of the United States and is a constituent agency of the Department of the Executive Branch of the Government of the United States known as the Department of Housing and Urban Development. Defendant was formerly known as the Public Housing Administration.

6. The Authority is a municipal corporation, organized and existing under the laws of the State of Illinois, with its principal office located in the City of Chicago, Illinois. The public housing facilities in the City of

Chicago are under the jurisdiction, management and control of the Authority. Under the laws of the State of Illinois, the Authority has the power and the duty to engage in low-rent housing projects, which activity is declared by such laws to be a governmental function essential to the public interest.

7. Under the laws of the State of Illinois the Authority has the power and the duty to select and acquire real property as sites for regular family public housing projects in the City of Chicago, but such sites, when selected by the Authority, may not be acquired by it until the Authority has advised the City Council of the City of Chicago (the "City Council") of the description of the sites proposed to be acquired and the City Council has approved the acquisition thereof by the Authority. The statute of the State of Illinois which requires such approval by the City Council (Ill. Rev. Stats., Ch. 67½, § 9) was enacted and became effective in 1949.

8. During the period from 1950 to the present, the applicants for and tenants of regular family public housing projects of the Authority have been predominantly Negro. At present, approximately 93% of the applicants for regular family public housing projects whose names appear on the Authority's waiting list therefor are Negro, and approximately 90% of the tenants in such projects are Negro.

9. With respect to residence the City of Chicago is, and continuously since 1950 has been, highly segregated along racial lines. At the time of the filing of this Complaint, Negroes numbering approximately 1,000,000 persons constituted over 25% of the total population of Chicago. At such time over 85% of all Negroes living in Chicago resided in neighborhoods the racial composition of which was all Negroes or substantially all Negro (hereinafter "Negro neighborhoods"). During the entire period from 1950 to the present, over 75% of all Negroes living in Chicago resided in Negro neighborhoods. Such Negro neighborhoods were and are predominantly large and contiguous, and not small and scattered, and they constitute compact, segregated areas of Negro residence the bulk of which is known as the Negro Ghetto.

10. Such large scale residential segregation of Negroes within the Negro Ghetto in Chicago has had and will continue to have highly detrimental effects upon Negroes living therein, including the following:

(a) Physical isolation from and lack of social contact with the larger predominantly white community within which the Negro Ghetto is located generate, among Negro residents thereof, feelings of inferiority as to their status in the community that affect their hearts and minds in a way unlikely ever to be undone. The separation of the races is usually interpreted as denoting the inferiority of the Negro group, and the sense of inferiority thus imparted to residents of the Negro Ghetto detrimentally affects their motivation and their ability to become useful members of the society at large, and has a tendency to retard their educational, social and political development. Such feelings of inferiority and other detrimental effects have been and are produced by the Negro Ghetto in Chicago.

(b) Physical isolation from and lack of social contact with the larger predominantly white community within which the Negro Ghetto is located results, and has resulted in Chicago, in a pervasive life pattern of pathology marked by ignorance, fear, racial misunderstanding, broken homes, illegitimacy, delinquency, drug addiction, hatred and violence, all of which cripples and destroys great numbers of persons living within the Negro Ghetto.

(c) Segregation in education invariably occurs where Negroes are residentially segregated and such educational segregation has occurred in Chicago and has followed the geographic pattern of the residential segregation hereinabove referred to. At the time of the filing of this Complaint approximately 90% of the Negroes attending elementary schools and approximately 70% of the Negroes attending high schools in Chicago attended seg-

regated Negro schools—i.e., schools which were all Negro or substantially all Negro. Such educational segregation is harmful to children attending such schools, generates feelings of inferiority as to their status in the community that affects their hearts and minds in a way unlikely ever to be undone, results in inferior education for such children, and detrimentally affects their motivations and their ability to become useful adult members of the society at large.

(d) As is stated in Executive Order No. 11063 of the President of the United States, "discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their inalienable rights to life, liberty and the pursuit of happiness." The Negro Ghetto in Chicago is one such segregated pattern, has produced and continues now to produce such other forms of discrimination and segregation and has caused and continues now to cause such deprivation of opportunity to the residents thereof.

11. Since 1950 and prior to April 7, 1965, numerous sites were selected by the Authority, approved by the City Council, and acquired by the Authority for the purpose of erecting regular family public housing projects thereon. Following such acquisition the Authority erected regular family public housing projects on such sites consisting of hundreds of dwelling units and housing thousands of tenants, and the Authority presently maintains and operates the same.

12. Substantially all of said numerous sites selected for regular family public housing projects by the Authority and approved by the City Council since 1950 and prior to April 7, 1965, were in neighborhoods which were at the time of such selection, and are now, Negro neighborhoods, and were and are within the areas known as the Negro Ghetto.

13. Prior to April 7, 1965, the Authority selected and on or shortly prior to April 7, 1965, the City Council approved sites for the following described proposed new regular family public housing projects:

1. Project 2-12, Washtenaw & 12th Place, 201 dwelling units.
2. Project 2-27, Adams and Wood Avenues, 105 dwelling units.
3. Project 2-28, Six Scattered Sites, 241 dwelling units.
4. Project 2-32, 43rd and Princeton, 444 dwelling units.

In addition, prior to April 7, 1965 the Authority selected Project 2-33, Pershing Road and Cottage Grove Avenue, for expansion, involving the construction of 606 additional dwelling units at or adjacent to the site of such project. Said proposed projects and the proposed expansion of Project 2-33 are hereinafter collectively referred to as the "Five Proposed Projects." Each of the sites for the Five Proposed Projects is in a neighborhood which was at the time of selection and is now a Negro neighborhood, and was and is within the areas known as the Negro Ghetto.

14. The Five Proposed Projects are large scale public housing projects designed and intended to provide in the aggregate approximately 1,600 new dwelling units for the housing of thousands of public housing tenants as follows:

2—15 story buildings	1—13 story building
1—14 story building	1—10 story building
4—8 story buildings	22—3 story buildings
5—7 story buildings	1—2 story building

Construction of the Five Proposed Projects has not yet begun.

15. In 1966 the Authority selected and submitted to the City Council for approval twelve additional sites for twelve proposed additional regular family public housing projects, designed and intended to provide in the aggregate approximately 1,300 dwelling units for the

housing of thousands of public housing tenants. Eleven of the sites for said twelve proposed projects (hereinafter collectively referred to as the "Twelve Proposed Projects") are located in the Woodlawn, Oakwood, Lawndale and East Garfield Park areas of Chicago, and the twelfth site is located at 118th Street and Wood Avenue. On or about July 11, 1966, the City Council approved 11 of such sites. Each of the sites for the Twelve Proposed Projects is in a neighborhood which was at the time of selection and is now a Negro neighborhood, and was and is within the areas known as the Negro Ghetto.

16. Since 1950 substantially all of the sites selected by the Authority for regular family public housing projects have been in Negro neighborhoods and within the areas known as the Negro Ghetto because the Authority has deliberately chosen sites for such projects which would avoid the placement of Negro families in white neighborhoods. After 1949 the Authority sold and did not build regular family public housing projects upon sites previously acquired by it in white neighborhoods, because the Authority deliberately determined not to submit any sites for City Council approval of regular family public housing projects which would result in the placement of Negro families in white neighborhoods.

17. The Authority deliberately chose Negro neighborhoods for each of the sites for the Five Proposed Projects and for the Twelve Proposed Projects to avoid the placement of Negro families in white neighborhoods.

18. The effect of the selection of sites by the Authority in Negro neighborhoods upon Negro applicants for and tenants of regular family public housing projects has been and continues to be that:

(a) Such applicants and tenants, if they choose to live in Authority's public housing facilities at all, have been and are forced to reside within the Negro Ghetto in the City of Chicago, and have been and are denied the opportunity to reside in public housing facilities in white neighborhoods;

(b) Existing patterns of Negro residential and school segregation in the City of Chicago have been and are continued and strengthened and the detrimental effects and evil consequences of such segregation, all as alleged in Paragraph 10 hereof, are enlarged and imposed upon such applicants and tenants; and

(c) The impact of such detrimental effects and evil consequences, as alleged in paragraph 10 hereof, upon such applicants and tenants, is the greater because, by reason of the site selection policies hereinabove described, such impact appears to have the force and sanction of law.

19. By reason of the facts hereinabove alleged, construction of the Five Proposed Projects and of the Twelve Proposed Projects on the sites selected therefor, and perpetuation thereby of Authority's racially discriminatory public housing system, (a) will force plaintiffs and the class they represent to live exclusively in Negro neighborhoods within the Negro Ghetto if they choose to live in Authority's public housing facilities at all, (b) will preclude plaintiffs and the class they represent from having the opportunity to reside in public housing facilities in white neighborhoods, and (c) will continue and strengthen existing patterns of residential and school segregation in the City of Chicago and impose the evil consequences thereof, all as alleged in paragraph 10 hereof, upon plaintiffs and the class they represent.

20. The Authority has applied to the defendant for, has received from the defendant, and has employed Federal financial assistance in the construction of and otherwise in support of the numerous regular family public housing projects referred to in paragraph 11 hereof. The Authority has applied to the defendant for, either has received or shortly will receive from the defendant, and will continue thereafter to receive Federal financial assistance for the proposed construction of and otherwise in support of the Five Proposed Projects. Annual contributions contracts pursuant to which such assistance in

the future will be provided have been executed by or on behalf of the Authority and the defendant in connection with each of the Five Proposed Projects. The Authority has applied to the defendant for and has received assurance that it will receive Federal financial assistance for the proposed construction of and otherwise in support of the Twelve Proposed Projects. The Authority proposes to use such assistance in the construction of and otherwise in support of the Five Proposed Projects and the Twelve Proposed Projects.

21. By reason of the facts hereinabove alleged the rights of plaintiffs and the class they represent under the due process clause of the Fifth Amendment to the Constitution of the United States have been and will continue to be violated, and plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury. Plaintiffs and the class they represent have no adequate remedy at law to redress the grievances herein set forth.

WHEREFORE, plaintiffs pray:

(1) That after a full hearing this Court declare that the Authority has been and is carrying on a racially discriminatory public housing system within the City of Chicago, Illinois, that such system is in violation of the rights of plaintiffs and the class they represent under the due process clause of the Fifth Amendment to the Constitution of the United States, and that plaintiffs and the class they represent have the right under said Amendment to end the employment of Federal financial assistance in connection with and in support of the racially discriminatory aspects thereof;

(2) That after a full hearing this Court permanently enjoin the defendant from making available to the Authority any Federal financial assistance to be used in connection with or in support of the racially discriminatory aspects of the public housing system within the City of Chicago, or for the construction or otherwise in support of the Five Proposed Projects or the Twelve Proposed Projects on any sites which have been selected in a racially discriminatory manner or which will have

the effect of continuing and strengthening existing patterns of Negro residential and school segregation in the City of Chicago; and

(3) That plaintiffs and the class they represent be given such other and further relief as the Court may deem just and equitable.

COUNT II

1. Jurisdiction of this Court is invoked pursuant to Title 28, U.S.C. §§ 1331 and 1343(4). This is an action in equity seeking declaratory relief under Title 28, U.S.C. §§ 2201 and 2202 and an injunction. The right sought to be secured in this action are rights secured by an Act of Congress providing for equal rights and for the protection of civil rights, to-wit, Title 42, U.S.C. § 2000d (Section 601 of Title VI of the Civil Rights Act of 1964). The matter in controversy exceeds, exclusive of interest and costs, the value of $10,000.

2. This is a proceeding for a declaration that the defendant has assisted in the carrying on and continues to assist in the carrying on of a racially discriminatory public housing system within the City of Chicago, Illinois, in violation of Title 42, U.S.C. § 2000d, for a permanent injunction enjoining the defendant from continuing to assist in the carrying on of the racially discriminatory aspects of such public housing system in the future, and for other appropriate relief.

3-20. The allegations of paragraphs 3 through 20 of Count I of this Complaint are incorporated herein by reference as paragraphs 3 through 20 of this Count II.

21. By reason of the facts hereinabove alleged the rights of plaintiffs and the class they represent, under Title 42, U.S.C. § 2000d, have been and will continue to be violated, and plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury. Plaintiffs and the class they represent have no adequate remedy at law to redress the grievances herein set forth.

WHEREFORE, Plaintiffs pray:

(1) That after a full hearing this Court declare that the Authority has been and is carrying on a racially discriminatory public housing system within the City of Chicago, Illinois, that such system is in violation of the rights of plaintiffs and the class they represent under Title 42, U.S.C. § 2000d, and that plaintiffs and the class they represent have the right under said Title 42, U.S.C. § 2000d to end the employment of Federal financial assistance in connection with and in support of the racially discriminatory aspects thereof;

(2) That after a full hearing this Court permanently enjoin the defendant from making available to the Authority any Federal financial assistance to be used in connection with or in support of the racially discriminatory aspects of the Authority's public housing system within the City of Chicago, or for the construction or otherwise in support of the Five Proposed Projects or the Twelve Proposed Projects on any sites which have been selected in a racially discriminatory manner or which will have the effect of continuing and strengthening existing patterns of Negro residential and school segregation in the City of Chicago; and

(3) That plaintiffs and the class they represent be given such other and further relief as the Court may deem just and equitable.

COUNT III

1-15. The allegations of paragraphs 1 through 15 of Count I of this Complaint are incorporated herein by reference as paragraphs 1 through 15 of this Count III.

16. Since 1950 substantially all of the sites selected by the Authority for regular family public housing projects have been in Negro neighborhoods and within the areas known as the Negro Ghetto. After 1940 the Authority sold and did not build regular family public housing projects upon sites previously acquired by it in white neighborhoods.

17. Each of the sites for the Five Proposed Projects and for the Twelve Proposed Projects is in a Negro neighborhood, and within the areas known as the Negro Ghetto.

18-21. The allegations of paragraphs 18 through 21 of Count I of this Complaint are incorporated herein by reference as paragraphs 18 through 21 of Count III.

WHEREFORE, plaintiffs pray:

(1) That after a full hearing this Court declare that the Authority has been and is carrying on a racially discriminatory public housing system within the City of Chicago, Illinois, that such system is in violation of the rights of plaintiffs and the class they represent under the due process clause of the Fifth Amendment to the Constitution of the United States, and that plaintiffs and the class they represent have the right under said Amendment to end the employment of Federal financial assistance in connection with and in support of the racially discriminatory aspects thereof;

(2) That after a full hearing this Court permanently enjoin the defendant from making available to the Authority any Federal financial assistance to be used in connection with or in support of the racially discriminatory aspects of the Authority's public housing system within the City of Chicago, or for the construction or otherwise in support of the Five Proposed Projects or the Twelve Proposed Projects on any sites which will have the effect of continuing and strengthening existing patterns of Negro residential and school segregation in the City of Chicago; and

(3) That plaintiffs and the class they represent be given such other and further relief as the Court may deem just and equitable.

COUNT IV

1-2. The allegations of paragraphs 1 and 2 of Count II of this Complaint are incorporated herein by reference as paragraphs 1 and 2 of this Count IV.

3-15. The allegations of paragraphs 3 through 15 of Count I of this Complaint are incorporated herein by reference as paragraphs 3 through 15 of this Count IV.

16-17. The allegations of paragraphs 16 and 17 of Count III of this Complaint are incorporated herein by reference as paragraphs 16 and 17 of this Count IV.

18-21. The allegations of paragraphs 18 through 21 of Count II of this Complaint are incorporated herein by reference as paragraphs 18 through 21 of this Count IV.

WHEREFORE, plaintiffs pray:

(1) That after a full hearing this Court declare that the Authority has been and is carrying on a racially discriminatory public housing system within the City of Chicago, Illinois, that such system is in violation of the rights of plaintiffs and the class they represent under Title 42, U.S.C. § 2000d, and that plaintiffs and the class they represent have the right under said Title 42, U.S.C. § 2000d to end the employment of Federal financial assistance in connection with and in support of the racially discriminatory aspects thereof;

(2) That after a full hearing this Court permanently enjoin the defendant from making available to the Authority any Federal financial assistance to be used in connection with or in support of the racially discriminatory aspects of the Authority's public housing system within the City of Chicago, or for the construction or otherwise in support of the Five Proposed Projects or the Twelve Proposed Projects on any sites which will have the effect of continuing and strengthening existing patterns of Negro residential and school segregation in the City of Chicago; and

(3) That plaintiffs and the class they represent be given such other and further relief as the Court may deem just and equitable.

ALEXANDER POLIKOFF
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Civil Action No. 66 C 1459

[Filed July 14, 1969]

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS, ROBERT M. FAIRFAX and JIMMIE JONES, PLAINTIFFS

v.

THE CHICAGO HOUSING AUTHORITY, a corporation, and C. E. HUMPHREY, Executive Director, DEFENDANTS

SUGGESTION ON RECORD OF DEATH

May it please the Court:

Plaintiffs suggest to the Court that DOROTHY GAUTREAUX, one of the Plaintiffs, has died, and that the cause of action should proceed at the suit of the surviving Plaintiffs.

/s/ Alexander Polikoff
ALEXANDER POLIKOFF
One of the Attorneys
for Plaintiffs

DATED: July 14, 1969

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed January 15, 1970, in
Civil Action No. 66 C 1459]

[Title Omitted in Printing]

EXCERPT FROM DEPOSITION OF
JOSEPH BURSTEIN

March 25, 1968

APPEARANCES:

ALEXANDER POLIKOFF, for Plaintiffs,
WILLIAM J. HURLEY, for Defendant
Chicago Housing Authority,

ALSO PRESENT:

JACK SCHMETTERER, Assistant United States Attorney, for the Secretary of Housing and Urban Development

• • • •

[105] MR. SCHMETTERER: • • •

Which sites of the 1966 proposed sites did you determine upon to reject?

THE WITNESS: Those sites we had determined upon to reject were those that were subsequently withdrawn by the Chicago Housing Authority.

MR. SCHMETTERER: What factors, if any, distinquished those sites from those which were subsequently approved?

MR. HURLEY: Objection.

THE WITNESS: The fact that distinguished them in the case of those sites that I referred to earlier were a combination of high concentration of Negroes in those areas plus a high concentration of public housing. In the case of the other sites, it was simply a high concentration of Negroes in the area.

MR. SCHMETTERER: Which sites had a high concentration of Negroes?

THE WITNESS: I don't—

MR. SCHMETTERER: I don't mean by identity—the ones that were accepted or rejected.

THE WITNESS: The ones that were rejected.

MR. SCHMETTERER: I have no further questions.

MR. POLIKOFF: May I ask one or two questions to [106] clarify this last exchange?

BY MR. POLIKOFF:

Q Did you say the ones that you determined to reject involved two elements: number one, they had a high concentration of Negroes in the area; and, number two, a high concentration of public housing in the area? Whereas, the sites that were subsequently approved involved only one, but not both of those elements?

A No.

Q Oh, I'm sorry.

A We rejected a number of sites. Of the sites that we rejected, some of them had both elements—a high concentration of Negroes and a high concentration of public housing. Others simply had a high concentration of Negroes.

Q Others among those that were rejected?

A That's right.

Q Thank you.

Was the rejection based on any specific provision of the law or regulation?

MR. HURLEY: Objection. There has been no showing that there was any rejection by the HAA at this point. As Mr. Burstein testified, the sites were withdrawn by the Chicago Housing Authority. Now, whether they had objections to them on a particular basis, that's one thing. But there has been no showing here that there was a rejection, as such.

[107] BY MR. POLIKOFF:

Q I will rephrase the question. Was the position of HAA as you have described it in answering Mr. Schmetterer's questions, based on any specific provision of law or regulation?

A Yes, they were based generally on our regulations pursuant to site selection regulations.

Q You have reference in particular to the regulations that were placed into effect in early 1967?

A No. The earlier regulations, because the '67 regulations were not then in effect.

MR. HURLEY: May I state for the record that I object to the cross-examination as well as the direct examination by Mr. Schmetterer and it is a continuing objection. Just for the record.

BY MR. POLIKOFF:

Q One last question. Was your determination to your position with respect to the rejection of these sites communicated to the Chicago Housing Authority?

A No, I don't recall that they were. I stated earlier, if you will recall, when you asked me what course had we determined on, the course we had determined upon, as of that time, was to call on the Chicago Housing Authority and discuss with them. I was asked more recently had we determined to reject those sites. The answer was yes. But [108] what action we had determined upon to take, if our meeting with Chicago had not turned out the way it had, we had not yet made any determination as what course of action we would follow if the meeting did not turn out to be a satisfactory one.

MR. HURLEY: This is what my objection was. These questions have been asked and answered, and there is no doubt in Mr. Burstein's mind—he wasn't confused by the questions.

MR. SCHMETTERER: I think everybody here understands that there might have been an ambiguity on the record which I could not, as Counsel for the agency, allow to stand.

MR. HURLEY: Any ambiguity, I would respectfully submit, Mr. Schmetterer, is apparent only to you.

MR. SCHMETTERER: Anybody else have any question? Everybody finished with the witness?

The deposition will conclude.

(Whereupon, at 4:35 p.m. o'clock, the deposition was concluded.)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

[Filed June 12, 1970]

[Title Omitted in Printing]

AFFIDAVIT OF DON MORROW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

CITY OF CHICAGO)
) ss.
COUNTY OF COOK)

Don Morrow, being first duly sworn, upon oath, deposes and says:

1. I am the Deputy Regional Administrator of Region IV, Department of Housing and Urban Development, a Department of the Executive Branch of the United States. In the absence of Francis D. Fisher, Regional Administrator, Region IV, Department of Housing and Urban Development, I serve as the Acting Regional Administrator.

2. As Regional Administrator, Francis D. Fisher has general supervision over the administration of the various programs of the Department of Housing and Urban Development in Region IV thereof which Region includes, among other states, the entire State of Illinois. His supervision of this function is by virtue of various Organizational Orders and Delegations of Authority from the Secretary of the Department of Housing and Urban Development.

3. The information set forth below has been compiled by the Regional Office staff of Region IV in accordance with and pursuant to my direction for the purposes of providing this Court with updated information with respect to (1) events relating to the Chicago Housing Authority since the entry of the Judgment Order in the case of Dorothy Gautreaux, Odell Jones, Doreatha R. Crenchaw, Eva Rodgers, James Rodgers,

Robert M. Fairfax and Jimmie Jones, Plaintiffs, v. The Chicago Housing Authority, a corporation, and C. E. Humphrey, Executive Director, Defendants, Civil Action No. 66 C 1459; and (2) other efforts on the part of the Department of Housing and Urban Development (HUD) to advance the purposes of desegregation and low income housing production.

Since the entry of the decree, the Department has focused on three objectives: Improving the living environment for residents of existing housing projects; the provision of low rent housing in the General Public Housing areas of Chicago; and increasing the supply of housing for low and moderate income families in the Chicago suburban areas.

The first objective has been substantially aided by a grant from the Department to the Chicago Housing Authority of $20,006,000 for improvements to existing low rent housing developments. The tenants have established the priorities for the use of the funds. They have chosen to spend the money primarily on day care and community facilities, improvement of apartment interiors, and changes in the exteriors of the buildings to improve their appearance and to increase the safety of the tenants. The Housing Authority will likely receive from HUD at least another two million dollars before July 31, 1970, out of supplemental monies for project modernization.

The Department has taken three steps toward the second objective. We informed the Chicago Housing Authority that our office would undertake an expeditious review of possible sites for low rent housing in the General Public Housing area as soon as CHA could provide our office with the addresses. Through two submissions on December 17 and 29, CHA provided HUD with sites which at a maximum would provide for 2,016 units of low rent housing in the General Public Housing area. Through letters of March 3 and 13 we informed CHA that we could

give tentative approval to 189 of those sites which would support 1,302 units of housing. On May 4 the Authority submitted an additional 61 sites in the General Public Housing area which would provide for 239 units. By letter of May 28, we notified CHA that tentative approval was given to 50 of these sites which would provide for 198 units. Thus at the present time we have given tentative approval to 239 sites in the General Public Housing area of the City of Chicago which would support approximately 1500 units. Assuming that the City Council approved all of these sites, the Authority would have more land than needed to build the 1500 units of family housing for which they have a reservation of funds.

The second step this office has taken was to inform CHA that HUD would approve significant increases in the average per unit land cost. The average was to be based on the total development program for family units—presumably 1500 units. This increase for land cost was authorized to help eliminate the land cost barriers to building in the General Public Housing area.

The Department has also consistently told CHA that funds for the 1500 units were being reserved so that there would be no delay in the beginning of construction once City Council approval was obtained, although national pressure for funds makes timely action necessary.

Pursuit of the third objective of building in the suburbs has called for a multiplicity of actions. One level of our activity has been to help identify sites for low rent housing. The Department contracted with the Real Estate Research Corporation to develop site criteria for low and moderate income housing. That study is now complete.

The development of the criteria was done in cooperation with the CHA and the Cook County Housing Authority. The actual work of site selection in the

City of Chicago undertaken to date by the Chicago Housing Authority and outlined above will be chargeable to HUD as a development cost of the housing which will result.

The Northeastern Illinois Planning Commission has agreed to undertake an identification of the locations within the Chicago metropolitan area where low and moderate income housing should be built. They will be using the criteria developed through the above-mentioned study in conjunction with their general planning criteria for the region. Added to these criteria will be the special attention urged by HUD to achieving the objective of a racial and economic balance in communities within the region. The Planning Commission will then do studies of the land within the general locations they have identified as appropriate for low and moderate income housing. The specific analysis of land will include its availability, cost, soil conditions, water table and zoning. This information will then be provided to the Illinois Housing Development Authority, Cook County Housing Authority and the State Office of Housing and Buildings which will perform a liaison function with local housing authorities. The Planning Commission staff has also agreed to work to eliminate zoning restrictions which might stand in the way of housing on the land which they indicate is appropriate for low and moderate income housing. The purpose of this effort is to obtain a high involvement in location decisions for low and moderate income housing by the Regional Planning Commission. Physical and social aspects of housing should be as carefully planned for as the placement of open space and sewer systems.

This information will begin being provided by the Commission in a few months. In the meantime to satisfy an immediate need for housing sites in Cook County, we have indicated to the Cook County Housing Authority that HUD will look favorably on a request for an advance loan to the Authority to

identify sites in Cook County suitable for low rent housing. We expect to receive this request in the very near future.

Another level on which we have pursued the third objective is in our dealings with individual communities. We are urging Chicago area communities receiving HUD assistance to provide some low and moderate income housing in their communities. As is evident, the successful exercise of such encouragement and the administration of other forms of HUD assistance requires a substantial degree of flexibility and adroitness by our staff.

/s/ Don Morrow
DON MORROW
Deputy Regional Administrator,
Region IV
Department of Housing and
Urban Development

City of Chicago)
) ss.
County of Cook)

Subscribed and sworn to before me this 8th day of June 1970

/s/ Norman S. Joseph
Notary Public

My Commission expires
Jan. 13, 1971

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed November 26, 1971]

[Title Omitted in Printing]

Name of Presiding Judge, Honorable

RICHARD B. AUSTIN

Reserve space below for notations by minute clerk

Enter order consolidating Case numbered 66 C 1459 and 66 C 1460 (DRAFT)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed December 23, 1971]

[Title Omitted in Printing]

ORDER

This matter coming on to be heard pursuant to plaintiffs' motion for further relief, and the Court having considered the opinion of the Court of Appeals for the Seventh Circuit of September 10, 1971 in this cause and the mandate issued pursuant thereto, and this Court's order herein of November 11, 1971, and the Court having heard the presentations of the parties and being fully advised,

It is hereby ordered:

1. The parties shall attempt to formulate a comprehensive plan to remedy the past effects of unconstitutional site selection procedures in the public housing system in the City of Chicago and present the same to the Court within sixty days from the date hereof;

2. If the parties cannot agree, each party shall file with the Court a proposed judgment order embodying a comprehensive plan to remedy the past effects of such unconstitutional site selection procedures within ninety days from the date hereof; and

3. In the preparation of such plan or plans, the parties are requested to provide the Court with as broad a range of alternatives as seem to the parties feasible as a partial or complete remedy for such past effects, including, if the parties deem it necessary or appropriate to provide full relief, alternatives which are not confined in their scope to the geographic boundary of the City of Chicago.

ENTER:

/s/ Richard B. Austin
Judge

12/23/71

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed February 2, 1972]

[Title Omitted in Printing]

MOTION TO ADD PARTIES DEFENDANT AND TO FILE SUPPLEMENTAL COMPLAINT

NOW COME plaintiffs, by their attorneys, and move this Court,

(1) For the entry of an order pursuant to Rules 19, 20 and 21 of the Federal Rules of Civil Procedure to add as parties defendant in this cause the Mayor of the City of Chicago, Richard J. Daley; the several duly elected and acting members of the City Council of the City of Chicago, Fred B. Roti, Tyrone T. Kenner, Claude W. B. Holman, Leon M. Despres, Eugene Sawyer, William Cousins Jr., Alexander A. Adduci, Edward R. Vrdolyak, Michael A. Bilandic, Donald T. Swinarski, Casimir J. Staszcuk, Edward M. Burke, Francis X. Lawlor, Anna R. Langford, William H. Shannon, Edward J. Hines, Thomas F. Fitzpatrick, Clifford P. Kelley, Bennett M. Stewart, Frank D. Stemberk, Joseph Potempa, David Rhodes, Vito Marzullo, Stanley M. Zydlo, Eugene Ray, Jimmy L. Washington, Robert Biggs, Elmer R. Filippini, Thomas E. Keane, Terry M. Gabinski, Rex Sande, Wilson Frost, Casimir C. Laskowski, John F. Aiello, Thomas J. Casey, William J. Cullerton, Anthony C. Laurino, Seymour Simon, Edward T. Scholl, Burton F. Natarus, William S. Singer, Dick Simpson, Edwin P. Fifielski, Christopher B. Cohen, John J. Hoellen, Marilou Hedlund, Paul T. Wigoda, Jack I. Sperling; and the City of Chicago, a municipal corporation; and directing service of process upon them; and

(2) For the entry of an order pursuant to Rule 15(d) of the Federal Rules of Civil Procedure permitting plaintiffs to file instanter and to serve upon defendants a supplemental complaint setting forth certain events that have occurred since the filing of the original complaints herein.

In support of this motion, plaintiffs state as follows:

1. Rule 21 of the Federal Rules of Civil Procedure provides in relevant part that parties may be added by order of the court on motion of any party at any stage of the action and on such terms as are just.

2. Rule 19(a) of the Federal Rules of Civil Procedure provides in relevant part that a person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party to the action if in his absence complete relief cannot be accorded among those already parties, or if, under certain circumstances, he claims an interest relating to the subject of the action.

3. Rule 20(a) of the Federal Rules of Civil Procedure provides in relevant part that persons may be joined in one action as defendants if there is asserted against them a right to relief in respect of a series of occurrences and if any question of law or fact common to all defendants will arise.

4. Rule 15(d) of the Federal Rules of Civil Procedure provides in relevant part that upon motion of a party the court may permit him to serve a supplemental pleading setting forth events that have happened since the date of the pleading sought to be supplemented.

5. The parties sought to be added as defendants by this motion are subject to service of process and their joinder will not deprive the court of jurisdiction over the subject matter of this action.

6. Attached hereto and made a part hereof is a copy of the supplemental complaint proposed to be filed if this motion is granted. Such supplemental complaint sets forth events that have happened since the date of the original complaints in this cause. It is probable that the parties sought to be added as defendants will oppose the relief sought in the supplemental complaint and that they will claim an interest relating to the subject of the action under Federal Rule 19(a)(2). The supplemental complaint asserts against the defendants a right to relief arising out of the same series of occurrences and presents questions of law and fact common to all defendants.

Accordingly, "it is probable that the relief sought [in the supplemental complaint] cannot be achieved, or can be achieved only partially or conditionally, without [the parties to be joined]." *Bradley* v. *School Board of City of Richmond, Virginia*, 51 F.R.D. 139, 141 (E.D. Va. 1970).

WHEREFORE, plaintiffs ask that their motions be granted and that an order be entered in substantially the form attached hereto.

Respectfully submitted,

ALEXANDER POLIKOFF
MILTON I. SHADUR
ROGER PASCAL
CECIL C. BUTLER
BERNARD WEISBERG
CHARLES R. MARKELS
MERRILL A. FREED
Attorneys for Plaintiffs

By: /s/ Alexander Polikoff
ALEXANDER POLIKOFF

February 1, 1972

Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed February 2, 1972]

No. 66 C 1459

No. 66 C 1460

(Consolidated)

DOROTHY GAUTREAUX, et al., PLAINTIFFS

v.

CHICAGO HOUSING AUTHORITY, a corporation, CLEMENT E. HUMPHREY, Executive Director, Chicago Housing Authority, GEORGE W. ROMNEY, Secretary, Department of Housing and Urban Development, RICHARD J. DALEY, Mayor, City of Chicago, FRED B. ROTI, TYRONE T. KENNER, CLAUDE W. B. HOLMAN, LEON M. DESPRES, EUGENE SAWYER, WILLIAM COUSINS JR., ALEXANDER A. ADDUCI, EDWARD R. VRDOLYAK, MICHAEL A. BILANDIC, DONALD T. SWINARSKI, CASIMIR J. STASZCUK, EDWARD M. BURKE, FRANCIS X. LAWLOR, ANNA R. LANGFORD, WILLIAM H. SHANNON, EDWARD J. HINES, THOMAS F. FITZPATRICK, CLIFFORD P. KELLEY, BENNETT M. STEWART, FRANK D. STEMBERK, JOSEPH POTEMPA, DAVID RHODES, VITO MARZULLO, STANLEY M. ZYDLO, EUGENE RAY, JIMMY L. WASHINGTON, ROBERT BIGGS, ELMER R. FILIPPINI, THOMAS E. KEANE, TERRY M. GABINSKI, REX SANDE, WILSON FROST, CASIMIR C. LASKOWSKI, JOHN F. AIELLO, THOMAS J. CASEY, WILLIAM J. CULLERTON, ANTHONY C. LAURINO, SEYMOUR SIMON, EDWARD T. SCHOLL, BURTON F. NATARUS, WILLIAM S. SINGER, DICK SIMPSON, EDWIN P. FIFIELSKI, CHRISTOPHER B. COHEN, JOHN J. HOELLEN, MARILOU HEDLUND, PAUL T. WIGODA, JACK I. SPERLING, members of the City Council of the City of Chicago, and the CITY OF CHICAGO, a municipal corporation, DEFENDANTS

SUPPLEMENTAL COMPLAINT

NOW COME plaintiffs, by their attorneys, and for their supplemental complaint against defendants state as follows:

1. Defendant Richard J. Daley resides within and is Mayor of the City of Chicago. Under Section 3-11-14, Chapter 24, Illinois Revised Statutes, the Mayor of the City of Chicago presides at meetings of the City Council of the City of Chicago ("City Council") and has the power to vote at such meetings under certain circumstances.

2. Defendants Fred B. Roti, Tyrone T. Kenner, Claude W. B. Holman, Leon M. Despres, Eugene Sawyer, William Cousins Jr., Alexander A. Adduci, Edward R. Vrdolyak, Michael A. Bilandic, Donald T. Swinarski, Casimir J. Staszcuk, Edward M. Burke, Francis X. Lawlor, Anna R. Langford, William H. Shannon, Edward J. Hines, Thomas F. Fitzpatrick, Clifford P. Kelley, Bennett M. Stewart, Frank D. Stemberk, Joseph Potempa, David Rhodes, Vito Marzullo, Stanley M. Zydlo, Eugene Ray, Jimmy L. Washington, Robert Biggs, Elmer R. Filippini, Thomas E. Keane, Terry M. Gabinski, Rex Sande, Wilson Frost, Casimir C. Laskowski, John F. Aiello, Thomas J. Casey, William J. Cullerton, Anthony C. Laurino, Seymour Simon, Edward T. Scholl, Burton F. Natarus, William S. Singer, Dick Simpson, Edwin P. Fifielski, Christopher B. Cohen, John J. Hoellen, Marilou Hedlund, Paul T. Wigoda, and Jack I. Sperling are all of the duly elected and acting members of the City Council and reside in the City of Chicago.

3. Defendant City of Chicago ("City") is an Illinois municipal corporation having a population of more than 500,000 persons. The City Council is the governing body of the City.

4. On February 10, 1969, this Court issued its memorandum opinion in this cause. 296 F.Supp. 907.

5. On July 1, 1969, this Court entered its judgment order ("Judgment Order") in this cause. 304 F.Supp. 736.

6. On September 10, 1971, the Court of Appeals for the Seventh Circuit issued its opinion in this cause.

448 F.2d 731. Pursuant thereto this Court entered its order of December 23, 1971.

7. The Judgment Order provides, among other things, that the defendant Chicago Housing Authority ("CHA") shall

> "use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and shall take all steps necessary to that end . . ." (304 F. Supp. at 741.)

8. CHA's efforts to increase the supply of Dwelling Units as provided in the Judgment Order require CHA to acquire real property.

9. Section 9 of Chapter 67½, Illinois Revised Statutes, provides in part that no real property shall be acquired in a municipality having a population in excess of 500,000 by the housing authority within whose area of operation such municipality is located until the housing authority has advised the governing body of the municipality of the description of the real property proposed to be acquired and the governing body of the municipality has approved the acquisition thereof by the housing authority. Such provisions of said Section 9 are deemed by CHA to apply to its acquisitions of real property.

10. From July 1, 1969 until March 5, 1971, CHA did not advise the City Council of any real property proposed to be acquired by it for the purpose of increasing the supply of Dwelling Units in conformity with the Judgment Order.

11. On March 1, 1971, this Court entered an order directing CHA to advise the City Council on or before March 5, 1971, of real property proposed to be acquired by it for the purpose of providing not fewer than 1500 Dwelling Units in conformity with the Judgment Order. On March 5, 1971 CHA complied with such order and did so advise the City Council.

12. On January 3, 1972 this Court entered an order directing CHA to file certain plans with the Court on or before January 18, February 2 and Febrary 17, 1972, respectively. In its "Response" to paragraph 1

of such order, filed by CHA on January 18, 1972, CHA advised the Court as follows:

(a) In June, 1971, the City Council approved the acquisition by CHA of real property said by CHA to be suitable for the provision of 302 Dwelling Units in conformity with the Judgment Order; and

(b) Subject to the approval of the Department of Housing and Urban Development ("HUD") CHA proposes to acquire real property, the acquisition of which was so approved by the City Council in June, 1971, at 29 different locations, said to be suitable for the provision of 199 Dwelling Units in conformity with the Judgment Order.

13. Since June, 1971, the City Council has not approved the acquisition by CHA of any real property for the purpose of providing Dwelling Units in conformity with the Judgment Order.

14. Relying upon such lack of such approval and upon the provisions of Section 9, Chapter 67½, Illinois Revised Statutes, CHA has not acquired real property for the provision of Dwelling Units in conformity with the Judgment Order. Such failure by CHA to acquire real property for such purpose has the effect of denying to the plaintiffs the relief to which they are entitled under the Judgment Order and of preventing this Court from providing a full remedy for the violations of federal constitutional rights which this Court's memorandum opinion of February 10, 1969, found to have occurred.

15. Paragraph 2 of this Court's order of January 3, 1972, requires CHA to file with the Court on or before February 2, 1972, a specific plan for the prompt acquisition by CHA, regardless of any action taken or not taken by the City Council, of such number of additional sites for Dwelling Units as will, when added to the sites approved by the City Council in June, 1971, permit CHA to provide the 1500 Dwelling Units referred to in this Court's order of March 1, 1971. Such order of January 3, 1972, further provides that a hearing for the consideration of such plan and the entry

of further orders in connection therewith shall be held on February 17, 1972.

WHEREFORE, following such hearing on February 17, 1972, plaintiffs pray:

(a) for the entry of a declaratory judgment that under the circumstances set forth herein the effect of the operation of Section 9, Chapter 67½, Illinois Revised Statutes, has been and is to deny plaintiffs the relief to which they are entitled under the Judgment Order and to prevent this Court from providing a full remedy for the violations of federal constitutional rights which the Court's memorandum opinion of February 10, 1969, found to have occurred;

(b) for the entry of an order directing CHA to acquire, regardless of any action taken or not taken by the City Council, such additional sites for Dwelling Units as are specified in CHA's plan therefor to be filed on February 2, 1972, subject to such modifications therein as may be appropriate in light of the evidence adduced at such hearing of February 17, 1972;

(c) for the entry of an order directing CHA to provide Dwelling Units on such additional sites as rapidly as possible; and

(d) for the entry of an order granting plaintiffs such other and further relief as the Court may deem just and equitable.

Alexander Polikoff
Milton I. Shadur
Roger Pascal
Cecil C. Butler
Bernard Weisberg
Charles R. Markels
Merrill A. Freed
Attorneys for Plaintiffs

By: /s/ Alexander Polikoff
Alexander Polikoff

February 1, 1972
Alexander Polikoff
109 N. Dearborn Street
Chicago, Illinois 60602
641-5570

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed February 2, 1972]

[Title Omitted in Printing]

ORDER

This matter coming on to be heard on the motion of plaintiffs to add parties defendant and to file a supplemental complaint, and the Court having heard the presentations of the parties and being fully advised,

IT IS HEREBY ORDERED:

1. The Mayor of the City of Chicago, Richard J. Daley, the several duly elected and acting members of the City Council of the City of Chicago, Fred B. Roti, Tyrone T. Kenner, Claude W. B. Holman, Leon M. Despres, Eugene Sawyer, William Cousins, Jr., Alexander A. Adduci, Edward R. Vrdolyak, Michael A. Bilandic, Donald T. Swinarski, Casimir J. Staszcuk, Edward M. Burke, Francis X. Lawlor, Anna R. Langford, William H. Shannon, Edward J. Hines, Thomas F. Fitzpatrick, Clifford P. Kelley, Bennett M. Stewart, Frank D. Stemberk, Joseph Potempa, David Rhodes, Vito Marzullo, Stanley M. Zydlo, Eugene Ray, Jimmy L. Washington, Robert Biggs, Elmer R. Filippini, Thomas E. Keane, Terry M. Gabinski, Rex Sande, Wilson Frost, Casimir C. Laskowski, John F. Aiello, Thomas J. Casey, William J. Cullerton, Anthony C. Laurino, Seymour Simon, Edward T. Scholl, Burton F. Natarus, William S. Singer, Dick Simpson, Edwin P. Fifielski, Christopher B. Cohen, John J. Hoellen, Marilou Hedlund, Paul T. Wigoda and Jack I. Sperling, and the City of Chicago, a municipal corporation, be and they hereby are made parties defendant in this consolidated cause;

2. Leave is hereby granted to plaintiffs to file instanter the supplemental complaint referred to in said motion of plaintiffs;

3. Defendants Chicago Housing Authority and George W. Romney shall answer or otherwise plead to the supplemental complaint on or before February 16, 1972, and the newly added defendants shall answer or otherwise plead to the supplemental complaint within the time provided in Rule 12(a) of the Federal Rules of Civil Procedure; and

4. Plaintiffs shall cause copies of the supplemental complaint and this order to be served as promptly as possible upon the newly added defendants in the manner provided in Rule 4 of the Federal Rules of Civil Procedure, and Henry McMorris is hereby appointed pursuant to Rule 4(a) of the Federal Rules of Civil Procedure as a person empowered to make such service.

ENTER:

/s/ R. B. Austin
Judge

February 2, 1972

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FROM TRANSCRIPT OF
FEBRUARY 22, 1972

PRESENT:

MR. ALEXANDER POLIKOFF,

MR. MILTON I. SHADUR,
on behalf of Plaintiffs;

MR. J. C. MURRAY and

MR. WILLIAM WARNOCK,
on behalf of the Government;

MR. PATRICK W. O'BRIEN,

MISS KATHRYN KULA,
on behalf of Chicago Housing Authority;

MR. EARL L. NEAL,
on behalf of City of Chicago.

* * * *

[2] MR. POLIKOFF: Would you like me to start, Jim?

MR. MURRAY: Yes, please. I would appreciate it. That will give Mr. Warnock more time to get over here.

MR. POLIKOFF: All right.

Your Honor, we are here this morning because on December 23rd you entered this order.

THE COURT: I have got a copy of it right here.

MR. POLIKOFF: Which says that the parties should attempt to formulate a comprehensive plan to remedy the past defects of unconstitutional site selection procedures and present the same to the Court within 60 days.

Then it goes on to say, as you know, if the parties can't agree they should each file their own proposed judgment order in 90 days.

Well, this is the 60-day period and we thought it appropriate to report where we are at the end of the 60 days provided in your order and that is why we are here.

I agreed with Mr. Murray that HUD's report would go first, but I guess under the circumstances ours should.

Is that agreeable?

[3] MR. MURRAY: That is correct, yes.

Mr. Warnock, the Regional Counsel of the Department of Housing and Urban Development, will be making the report for that agency.

MR. POLIKOFF: So what I am now, in about two minutes, going to tell your Honor is where the plaintiffs are at the end of the 60-day period.

We have, during this 60-day period, tried, with HUD, with CHA and with the City to get a dialogue going on the preparation of a comprehensive plan which would be responsive to your Honor's December 23rd order. So far, at least, the CHA and the City have each declined to meet with us for that purpose.

We have, however, met with the General Counsel of HUD, Mr. Maxwell. Mr. Shadur and I met with him in Washington several weeks ago. On the basis of that meeting and subsequent correspondence, my understanding is that the plaintiffs and HUD are prepared this morning to jointly represent to your Honor the following two propositions:

First, the parties are of the view, that is HUD and the plaintiffs, as I have indicated we are not speaking for the City and CHA here—

THE COURT: Get another chair, Mr. Murray.

[4] MR. POLIKOFF: Good morning, Mr. Warnock.

MR. WARNOCK: Good morning.

MR. POLIKOFF: Shall I finish?

MR. MURRAY: I think you ought to repeat the first thing since it is the substance of the report and Mr. Warnock will be able to pick it up.

MR. POLIKOFF: I was just saying, Bill, that based on our meeting with Mr. Maxwell in Washington and

subsequent correspondence, my understanding is that HUD and the plaintiffs are prepared jointly to represent two propositions to Judge Austin this morning. The first is that in principle the parties are of the view that a metropolitan remedy is desirable, that is remedy for the past defects of the unconstitutional site selection procedures; and, secondly, that in principle HUD would be willing to participate in the development of a metropolitan remedy which would be responsive to the Court's December 23rd order if the state and the local levels took the lead in the development of a metropolitan plan.

For the plaintiffs, your Honor, I want to say that we had hoped and sought more than that representation from HUD. We wanted HUD to play the leading role in the development of that plan. HUD has declined [5] to do so, so far at least, and therefore, speaking now only for the plaintiffs, we report that while we have agreement in principle on the two matters I just stated to your Honor—

THE COURT: Who has got the lead?

MR. POLIKOFF: —we do not have an ongoing, planning relationship with any of the other parties to the litigation at this point.

Under those circumstances the plaintiffs have no alternative but to go forward with the preparation of their own plan, responsive to the order. That we are doing. We probably will not be ready with a plan at the end of the 90-day period. We will ask for more time, I believe, at that time. I am not asking for that today because in 30 more days we will know more clearly how much time is needed.

I finally wish to say that, as we did in the CHA case, we will probably begin our submission to you and to the parties, of course, with an outline or suggestions of the principles that ought to be included in a final decree that everybody can then react to rather than submitting a complete proposed final decree at that time.

That concludes the plaintiffs' report.

[6] THE COURT: Now we have been waiting for a report from Washington.

MR. WARNOCK: Well, I think Alex has pretty well summarized the position that the Department has taken.

I must say I wasn't in Washington the day that he met with the General Counsel, but from what I have been told, his description of that meeting and what HUD agreed to do is correct.

As far as the order that Judge Austin entered back on December 23rd, I gather from your comments, Alex, and I understand from what took place in Washington, you conceded that there are significant reasons and obstacles to stand in the way of the Department from playing the leading role as the developer of comprehensive plans to remedy the past effects of the unconstitutional site selection procedures. It is basically a question of what is the responsibility of the Federal Government to state and local governments. What is the role which Congress has described or prescribed for the Department in initiating assistance to communities?

And it is for those reasons that the Department is not able to comply literally with the order [7] that the Judge entered back in December.

In terms of what we are willing to do and what we can do, quite correctly, we endorse the concept of metropolitan approaches to the housing problems, not just for Chicago but for all urban centers, because the problems of Chicago are not unlike those of most of the other large metropolitan cities. And the Secretary has said repeatedly, before Congress and in public engagements, that there is a need for local communities to stand together and face up to the problems that relate not only to the—

THE COURT: How do you propose to bring that about?

MR. WARNOCK: Well, I think that the most logical approach, the one that is most likely to succeed, is where local communities will initiate this kind of action, and not through—

THE COURT: In the event of no initiation, where do you go?

MR. WARNOCK: Well, Judge, I think that it is a question of continuing to mold and shape public opinion. And the Secretary is hard at work at that goal.

It is also a question of what incentives [8] the Federal Government can add into the mix.

As you may know, the Secretary has stated that he is going to attempt to secure the cooperation of metropolitan government officials in a number of cities around the country, and the incentive would be greater planning assistance, money being provided by the Federal Government to achieve metropolitan approaches to the housing problem.

I think that is the way—there is a way to succeed in developing scatteration of low and moderate income housing.

I don't believe that you are going to achieve any degree of success by trying to hammer it out in the courtroom and ordering parties to do things. I think that in terms of where the initiatives lie, they have to lie with the local communities, and I think there is a growing recognition on the part of local officials that they have to take account of not only their own little community, but what is happening in the large urban center upon which they are so vitally dependent.

THE COURT: I mean, you really believe that?

MR. WARNOCK: I really believe that, Judge.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FROM TRANSCRIPT OF
July 24, 1972

APPEARANCES:

ALEXANDER POLIKOFF, for Plaintiffs

PATRICK W. O'BRIEN, for Defendant Chicago Housing Authority

JAMES C. MURRAY, Assistant United States Attorney, for Defendant Secretary of Housing and Urban Development

* * * *

[62] MR POLIKOFF: * * * The first one by your Honor when you asked a question, I believe, of Alderman Simpson or maybe Mr. O'Brien or Mr. Murray, I am not sure which. You said, "Has it been proven that there was any segregation of housing out there outside of Chicago?" And the implication of that question, if I read it correctly—

THE COURT: I mean, other than what you consider segregation under the current zoning laws.

MR. POLIKOFF: I want to point out that we have not in this lawsuit attacked current zoning laws. Our relief has nothing to do with zoning laws, not at this stage at least.

We are addressing ourselves to the wrong that was committed by segregating public housing within the City of Chicago as it was—

THE COURT: By the Chicago Housing Authority and by HUD.

MR. POLIKOFF: —by the Chicago Housing Authority and HUD.

THE COURT: All right, let's keep it on this level.

MR. POLIKOFF: You asked, "Has there been any wrong proven out there, Arlington Heights, Palatine,

Evanston, Flossmoor, Highland Park—any of those parties committed any wrong?" The implication of that [63] question was that unless the plaintiffs can show some wrong of that sort, that public housing sort we are talking about or indeed any other sort was committed by those parties, that the relief we are talking about is lacking a base. There is no underlying wrong that would authorize your Honor to grant relief with respect to those parties. That's the first point I want to address myself to.

THE COURT: All right, go ahead.

MR. POLIKOFF: The succinct answer—and I will try to make this very narrow and precise—is that we do not propose asking your Honor to enter any order against Flossmoor or any order against Highland Park or Evanston or even any order against the Cook County Housing Authority or the DuPage Housing Authority or any of the other communities or housing authorities in the Chicago urbanized area.

THE COURT: Since you again dropped that name, I am again going to say to you and to the press, "I don't live in a lily-white suburb. We have blacks out there. They are lovely neighbors. They go to my church. They go to my grandchildren's schools. They visit each other at their homes and at the other homes and this sotto voice Flossmoor business, you can do what you [64] want with it but I am again going to reiterate that I don't and haven't for some time lived in a lily-white suburb and I don't want to live in one and I don't intend to live in one and I don't live in one."

So let's go on with anything else you want to say sotto voice and I'll refer to that, too.

MR. POLIKOFF: Well, let me tell your Honor that I mentioned in the same sotto voice, if that's the phrase for it, the community in which I live, and mine is not lily-white either and I used those examples as well as others to make it crystal clear, perfectly clear that with respect to any of the communities that we are talking about here, whatever their record in the past, favorable or unfavorable, good, bad, or indifferent with respect to race relations, it's irrelevant. We are not seeking

an order against any of those communities. We are not seeking to prove that any of those communities have committed a wrong. And I read into your Honor's question about whether there has been segregated public housing in any of those communities since or feeling that unless we make such a showing we aren't entitled to the kind of order we're talking about.

I want to respond to that implied question, [65] and the first part of the response is to point out that we aren't seeking an order directing those communities to do anything.

Your Honor knows, I believe, as the document, before you so state that under the state law CHA can go anywhere in the State of Illinois. It is not confined to the City of Chicago by state law. The only requirement before it can go any place else in the State of Illinois and the City of Chicago is that it have the consent of the local housing authority to do so. The precise analogy to the situation with respect to where CHA can go physically, territorially, that I wish to call your Honor's attention to is the analogy with respect to where it can go in the City of Chicago. It can't go anywhere in the City of Chicago without somebody's consent; namely, the City Council's.

THE COURT: Well, that's the way it used to be.

MR. POLIKOFF: Precisely. And why was it changed? It was changed because your Honor found that the inability of CHA to go wherever it wanted to go in the City of Chicago was frustrating the carrying out of necessary relief in this case, so to here.

THE COURT: By virtue of the conduct of the City Council.

[66] MR. POLIKOFF: Right. And what was that conduct? Simply inaction. Simply a refusal on the part of City Council to consider and act upon a proposal to permit CHA to go where it wanted.

Now that is all we are talking about.

THE COURT: That isn't the way it started out.

MR. POLIKOFF: That's the way it ended and that's the evidence on the basis of which the order was entered.

We did not prove and we didn't try to prove that the City Council was itself racist or segregationist. Your Honor may have believed this but we have been very careful throughout the introduction of evidence in this case not to make this a case in which we are charging any alderman of the City of Chicago or the Mayor of the City of Chicago with racism. And the cases we cited to your Honor and the evidence we introduced to your Honor was limited to one point and one point only, and I believe the order that your Honor entered on April 10th, 1972, reflects that, and that one point was that the refusal of the City Council to act to permit CHA to go where it wanted to go is frustrating the carrying out of the Court's order, and therefore, it's setting aside that requirement.

[67] Now, let me take Evanston—we will pick a neutral turf here. If your Honor, after an evidentiary hearing, should find that the refusal of the Cook County Housing Authority to permit the CHA to build some public housing in Evanston was frustrating the relief that the Court felt was necessary, by precise analogy with the order you entered against the City Council, you could enter an order setting aside the state law that prevents CHA from going where it wants and needs to go to carry out your Honor's orders.

The Cook County Housing Authority wouldn't be directed to do anything.

The City Council wasn't directed by your Honor in its April 10th order to do anything. You simply set aside in that order a requirement of state law that freed CHA to go forward, and that is the principle that we are talking about here.

To carry out that principle and apply that principle, your Honor, it is not necessary to find that the wrong has been committed by the Cook County Housing Authority or the City of Evanston, just as you did not find and we didn't ask you to find, there was no evidence to find that a wrong was committed by the City Council.

[68] The only thing you found that it's necessary for CHA to be free to go where it wants in the City of

Chicago, and you set aside the road blocks to that, the obstacles to that.

That's the first point I wanted to make in response, but let me emphasize it in a summary sentence.

The state law gives CHA the power to go anywhere in Illinois with somebody's consent. The state law gives CHA power to go anywhere in Chicago with somebody's consent.

When you found that the refusal to give that consent was barring CHA from doing what it ought to do, you set that state law aside.

Similarly the principle we are talking about is identical with respect to setting aside the state law that permits CHA to go into Cook County or DuPage County, and you do not in either case have to prove that a wrong was committed by the City Council or by the Cook County Housing Authority. All we would propose to do in that respect is in a normal evidentiary hearing show your Honor evidentiarily if we can't prove it in a matter of evidence, we lose, but try to show your Honor that it's necessary to give full relief to have some units provided in Cook County as well as [69] in Chicago. That's the fulcrum.

O.K. Second point I want to make in response:

You said, again, to one of the parties who was speaking to you that the segregation complained of was within the City of Chicago and the implication I believe was that, therefore, the relief must be confined to the City of Chicago.

I want to remind your Honor when I came in here the first day and said, "We've got to deal with the City Council now with its veto power," what you said to me and I happen to remember this, it won't be a quotation, but it will be a pretty good paraphrase. You said, "Do you think I have in mind, Mr. Polikoff, when I entered my order back in 1969, July 1 of 1969, do you think I had in mind setting aside this veto power of the City Council?" And the inference from what you said was that you obviously did not have it in mind. And I'm sure that's right. I didn't have it in mind. I don't think anybody had it in mind.

THE COURT: I didn't know it was going to become necessary to do so.

MR. POLIKOFF: Exactly, and I didn't know it either back in 1969, and neither did I know back in 1969 that it was going to be necessary—

[70] THE COURT: I mean, you were an optimist there. You were naive at that time. You assumed that the City Council would perform its governmental function. I chuckled at you when you said that and predicted that this was the end of public housing in the Chicago area.

MR. POLIKOFF: Well, whether I am naive or optimistic or some third thing, you can choose any adjective you want, the fact is that you didn't have it in mind as I didn't back in 1969 that we'd have to set aside or ask you to set aside this law with respect to somebody who is a non-party, that Mr. Murray emphasized that we are talking about, a non-party, someone who has never been in the case, against whom we have never introduced or made any allegations—or introduced any proof and yet we came in and we persuaded you on the basis of law and evidence that as the facts have developed in the case since the first order it was now necessary to deal with a non-party and to deal with it in the way I talked about, not by proving that it was committing wrong, but by proving that non-action by that party was standing in the way. We got the party brought in and a declaratory judgment was entered.

It's exactly that same principle that we are [71] talking about here.

Again, if we can prove to your Honor after an evidentiary hearing that the 8500 units that we are talking about with respect to CHA are not enough that some additional amount is needed, and that some portion of that additional amount should on basic principles of equity go outside the City of Chicago, then it doesn't matter that the segregation complained of originally was carried out exclusively within the City of Chicago if the Court determines that it's necessary to go outside the city of Chicago for relief.

Again I will summarize that second point. I have only one more point to make. I'll summarize that second point.

It is true that the segregation complained of was physically limited to within the City of Chicago. It is not true that the Court is limited so far as giving relief from that wrong is concerned to those same territorial limits if after an evidentiary hearing it determines that going more broadly is necessary.

The problem of parties is no problem at all, as witnesses what happened when we brought in the City Council, a theretofore non-party.

[72] Mr. Murray parenthetically said that the state law we are talking about, that was talked about in the Louisiana case existed prior to the commencement of that litigation.

MR. MURRAY: No, no, subsequent to.

MR. POLIKOFF: I am sorry. Yes.

It was passed subsequent to the litigation. I think that that may very well be true in the Louisiana case and I think that is right. That has nothing to do with the principle.

In the April 10th order when we set aside the City Council's veto power, the state law was set aside and that case was passed long prior to the commencement of this litigation and all the authorities that are cited in that order, the laws, most of them at least, were passed prior to the commencement of litigation and that is simply an irrelevant red herring.

The final point that I wish to make, your Honor, relates to something that Mr. O'Brien said, then I'll briefly summarize where I think we are in just one or two sentences.

Mr. O'Brien talked about the grandiose plans, and he previously called it a wish list of 60,000 units and so on. [73] I am not naive enough to assume and I'm sure that your Honor doesn't assume that I assume that the 60,000 units we are talking about is anything other than a measure of the needed amount of relief over whatever period of time it takes, depending on how much money Congress allocates—I am sorry, appropriates, and how much HUD allocates to this area. Nobody is talking about trying to force Congress to do anything or HUD to give more money to Chicago than they give to San Francisco or Los Angeles or Detroit.

We are only talking about seeing to it that whatever amounts of money are allocated to the area for housing by the responsible federal parties, Congress and then HUD, are then used after such allocations in a way that is the reasonably related to the supplying of relief in this case.

What we are trying to do, your Honor, is to see to it that the money that is being poured right now, currently, and next year and next year by HUD into the Chicago area is used in a way to provide relief to the plaintiff class and not in other ways.

Let me summarize. I think what the plaintiffs seek is to persuade your Honor, an opportunity to do so in a normal way, now that you have heard everybody's [74] reactions, with witnesses and law, that more than the 8500 units is necessary to provide relief. That's going to be duck soup in terms of evidence. I think that's hardly disputed—that those additional units beyond the 8500, some percentage of them should go outside the City of Chicago and that the Court has the power as a matter of law having made the factual determination that more than 8500 is necessary, No. 1, and some portion of the excess should go outside the City of Chicago, No. 2, that the Court has the power in the format we've suggested with relation to the analogy of the April 10th order where similarly in legal principle the same course was pursued, that the Court has the power to effect that kind of a remedy.

We think that the need for the effectuation of the principles of justice to which Alderman Simpson referred require that the Court not wash its hands of a difficult task, require that the Federal judiciary not knuckle under to a recalcitrant local housing authority and a recalcitrant City Council, but that the appropriate steps be taken to vindicate the Federal Constitution which is after all what's at stake in this case, your Honor.

My colleague, Mr. Shadur, may want to say [75] something, your Honor.

THE COURT: All right.

* * * *

[82] * * * THE COURT: What's next?

This is the end of our discussion. I am assuring you of that.

Is it a matter of setting this matter for—

MR. POLIKOFF: Your Honor, what the plaintiffs would ask is that unless anybody wants to further—have further discussion, which I don't ask for on our behalf at this point, that a date bet set in the fall in September or October as your Honor chooses, to give the opportunity—the plaintiffs the opportunity they have not yet had to introduce evidence before your Honor in support of a specific proposed judgment order.

MR. MURRAY: Your Honor, we would object to that proposal.

As your Honor indicated in your order of September 23rd contemplating the submission of a proposed judgment order by plaintiffs, that has not been done.

This conference, as I understood it, and as Mr. Polikoff's intermittent letters to the Court indicated, was sort of an outline to determine whether we were going to commence upon this approach legally [83] and that's the reason why.

I think we should have a determination at this point in time, because if your Honor does determine it then certainly we are going to have to take rather extensive discovery in order to prepare for such a hearing. I submit to your Honor now is the time we would urge the Court to rule upon it. I will make a formal motion to that effect, move to enter our proposed judgment order.

MR. O'BRIEN: Your Honor, on behalf of CHA I see no point in proceeding to a hearing, any kind of a hearing on the form of proposed order until there is before us all a form of proposed order on behalf of the plaintiffs which at this time there is not. There is a very sketchy outline. Your Honor, I would not

be prepared for a hearing on an outline. I think that you should give us what they want as HUD has.

THE COURT: Well, it may be premature to expect them to have an order prior to discussion. Maybe now they are in a better position "to formalize it" than they were before today.

MR. POLIKOFF: We will be happy if your Honor prefers—no problem—to have drafted a specific proposed order before the hearing I ask for is granted [84] and held.

I would like to point out and I will make this as a parenthesis because I do have no objection to submitting to a proposed order, and I want to emphasize that. I want to point out that the traditional form of equity in the relief stage of the case at least in my experience is that the order grows out of the hearing rather than the other way around.

And in my personal experience it is not typical for a specific proposed order to be submitted as relief before the hearing is held. However, we have no objection to that.

THE COURT: I have never asked for any findings of fact before a hearing.

MR. MURRAY: Your Honor, I feel like I am in a Kafka plot.

Your Honor, on December 23rd the order wasn't drafted by us, it was drafted by the plaintiffs and contemplated a proposed judgment order to be submitted to the Court.

Now the plaintiffs did not submit such order. They've been given over eight months to do so and we come up, we fulfill what we felt was our obligation under your Honor's order, submitted a proposed judgment [85] order. Then the plaintiffs come up and say, "No, we're not going to submit it. We will submit a proposed outline for discussion and if your Honor approves that outline, then we will embody the principles of your approval in a proposed judgment order," and that's what I thought this conference was all about, your Honor.

THE COURT: The record will show that we had a conference. The record will show that I won't be back until September.

Good-bye, fellows.

MR. MURRAY: Your Honor, may we place all of this and continue it for further hearing just for the submission of the proposed order?

THE COURT: I haven't entered any kind of an order.

(Which were all the proceedings had and taken in the above-entitled cause on the day and date aforesaid.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed September 25, 1972]

[Title Omitted in Printing]

PLAINTIFFS' PROPOSED JUDGMENT ORDER

This matter coming on to be heard pursuant to this Court's order of December 23, 1971, directing certain of the parties to submit proposed final orders for comprehensive relief, and pursuant to the submissions of the parties as so directed, to hearings held with respect thereto, and to prior orders entered and hearings held in these consolidated cases, and the Court being fully informed in the premises, the Court now makes the following findings of fact and reaches the following conclusions of law:

FINDINGS OF FACT

* * * *

CONCLUSIONS OF LAW

Based on the foregoing findings of fact and conclusions of law, and upon the determination of the Court that the provisions of this judgment order are necessary to remedy the past effects of the unconstitutional site selection and tenant assignment procedures previously employed in the public housing system in Chicago,

IT IS HEREBY ORDERED:

I. For purposes of this judgment order,

A. "HUD" shall mean the defendant, Department of Housing and Urban Development.

B. "CHA" shall mean the defendant, Chicago Housing Authority.

C. "Local Housing Authority" shall mean any public housing agency as defined in 42 U.S.C. § 1402 (11), including CHA unless otherwise stated.

D. "Dwelling Unit" shall mean an apartment or single family residence within the "Urbanized Area" as hereinafter defined which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through a Local Housing Authority, whether in a structure owned in whole or in part by such Local Housing Authority (whether or not newly constructed) or to be otherwise made available for occupancy by or through such Local Housing Authority to such a family. "Dwelling Units" include "Leased Dwelling Units" as hereinafter defined.

E. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by a Local Housing Authority from any person, firm or corporation.

F. "Urbanized Area" shall mean those portions of Cook, DuPage and Lake Counties, Illinois, which comprise the Chicago Urbanized Area as such area is defined and determined in the 1970 census of the United States Bureau of the Census.

G. "Limited Public Housing Area" shall mean that part of the Urbanized Area which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within the City of Chicago and within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the Urbanized Area. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this Section G, results of the 1970 census taken by the Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evi-

dence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

H. "Public Housing Product" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order neither HUD nor CHA shall authorize, approve, provide funds for or implement any plan or program for Dwelling Units to be located within the Urbanized Area unless such plan or program affirmatively requires that,

A. All Dwelling Units provided for in such plan or program shall be located in conformity with the provisions of Articles III or IV hereof, as the case may be, and

B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Articles III or IV hereof, as the case may be.

III. CHA shall continue to use its best efforts to increase the supply of Dwelling Units within the City of Chicago as rapidly as possible in conformity with the provisions of the judgment order of July 1, 1969, en-

tered in this cause, as modified and enforced by subsequent orders also entered in this cause, provided that said order of July 1, 1969, is hereby modified by deleting Section E of Article III therefrom, and shall continue to take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development. CHA's Tenant Assignment Plan, approved by this Court's order of November 24, 1969, shall continue to be applicable to all Dwelling Units provided under this Article III. HUD shall cooperate with and assist CHA in every feasible way to the end that the supply of Dwelling Units in the City of Chicago may be increased as rapidly as possible in accordance with this Article III.

IV. CHA and HUD shall use their best efforts to the end that Dwelling Units shall be provided within the Urbanized Area outside the City of Chicago equal in number to 50% of the Dwelling Units provided from time to time within the City of Chicago under Article III hereof. Such efforts shall initially be exerted to the end of providing 750 Dwelling Units pursuant to this Article IV,. such number of Dwelling Units being a number equal to 50% of CHA's current reservation from HUD for Dwelling Units to be provided within the City of Chicago. Without limiting the foregoing,

A. CHA shall immediately use its best efforts to enter into written agreements with other Local Housing Authorities in the Urbanized Area outside of Chicago pursuant to which such other Local Housing Authorities will (i) make application to HUD for reservations of some portion or all of such 750 Dwelling Units to be provided in the Urbanized Area outside of Chicago, and seek to enter into appropriate cooperation agreements as provided in 42 U.S.C. § 1415(7)(b) or obtain other local approvals as provided in 42 U.S.C. § 1421b(a)(2) respecting the same, and (ii) promptly take all such additional steps, including carrying out all necessary planning and

development and making appropriate applications for federal finanical assistance, as will enable them to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing, such agreements between CHA and other Local Housing Authorities shall provide that such other Local Housing Authorities shall from time to time apply to this Court for any orders they may deem necessary or desirable to enable them to so increase the supply of Dwelling Units, including without limitation such orders respecting 42 U.S.C. § 1415(7)(b) and 42 U.S.C. § 1421b(a)(2) as will enable them to so increase the supply of Dwelling Units in the Urbanized Area outside of Chicago without first obtaining the cooperation agreements or other local approvals provided for under such statutes. Copies of any such agreements between CHA and other Local Housing Authorities and of any such applications to HUD, cooperation agreements and local approvals made or given pursuant thereto shall promptly be filed with the Court.

B. To the extent such agreements between CHA and other Local Housing Authorities and such applications respecting such 750 Dwelling Units are not made pursuant to Section A of this Article IV within 180 days from the date of this judgment order, or to the extent thereafter actions are not diligently taken to provide such Dwelling Units as rapidly as possible, CHA shall itself immediately make application to HUD for reservations therefor. Such application shall be separate from and in addition to all other CHA applications to HUD for reservations for Dwelling Units, and shall be identified by CHA as being made pursuant to this Section B of Article IV of this judgment order. Thereafter CHA shall promptly take all such additional steps, includ-

ing making appropriate application for federal financial assistance and carrying out all necessary planning and development, as will enable it to obtain and utilize such reservations to increase the supply of Dwelling Units in the Urbanized Area outside of Chicago as rapidly as possible in conformity with the provisions of this Article IV. Without limiting the foregoing CHA shall from time to time apply to this Court for any further orders it may deem necessary or desirable to enable it to so increase the supply of Dwelling Units, including without limitation such orders respecting Ch. 67½ Ill.Rev. Stats. § 27(c), 42 U.S.C. § 1415(7)(b) and 42 U.S.C. § 1421b(a)(2) as will enable CHA to so increase the supply of Dwelling Units in the Urbanized Area outside of Chicago without first obtaining the contracts, cooperation agreements and local approvals provided for, respectively, under such statutes.

C. Dwelling Units provided pursuant to this Article IV shall conform with the following provisions:

(1) The construction of any Dwelling Units in any Limited Public Housing Area outside of Chicago shall not be commenced unless within three months following such commencement of construction at least 75% of the Dwelling Units on which CHA or another Local Housing Authority shall have commenced or caused to have commenced construction, and shall have continued or completed construction, shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area outside of Chicago.

(2) No leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area outside of Chicago (in addition to Leased Dwelling Units in such Area which on the date of this order are already

occupied), unless, within three months following such occupancy, at least 75% of the Leased Dwelling Units then occupied are located in the General Public Housing Area outside of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area outside of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling Units have been occupied, or are under construction which is continuing, in the General Public Housing Area outside of Chicago in excess of the 75% minimum requirement of Subsection C(1) of this Article IV.

(3) Neither CHA nor any other Local Housing Authority acting pursuant to this Article IV shall concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

(a) No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA or any other Local Housing Authority acting pursuant to this Article IV to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will assist in achieving the purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

(b) No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apart-

ments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing Authority in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract.

(c) No Dwelling Units shall be located in any municipality or in the unincorporated area within any township:

(i) if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA or any other Local Housing Authority in such municipality or unincorporated area would constitute more than 4% of the total number of apartments and single family residences therein; or

(ii) if, within 180 days from the date of this order, a cooperation agreement pursuant to 42 U.S.C. § 1415(7)(b) or local approval pursuant to 42 U.S.C. § 1421b(a)(2) is voluntarily entered into or given on behalf of such municipality or unincorporated area that provides for a number of Dwelling Units to be located therein in accordance with the provisions of this Article IV at least equal to 2% of the total number of apartments and single family residences therein, and application is made to HUD by a Local Housing Authority for a reservation for such number of Dwelling Units to be located in such municipality or unincorporated area, and

thereafter appropriate actions are diligently taken to provide such Dwelling Units as rapidly as possible.

(d) No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling Units aggregates no more than 20% of the total number of apartments in such structure.

(e) Such 750 Dwelling Units, and the aggregate of all other Dwelling Units to be provided under this Article IV, shall be located among the urbanized areas of Cook (outside of Chicago), Dupage and Lake Counties in substantially the proportion 6 to 2 to 1.

(4) CHA's Tenant Assignment Plan approved by this Court's order of November 24, 1969 shall be applicable to all Dwelling Units provided under this Article IV, except that "municipality or unincorporated area within any township" shall be substituted for "community area" therein.

V. CHA and HUD shall affirmatively administer their respective responsibilities under state and federal law in every respect (whether or not covered by specific provision of this judgment order) to the end that the supply of Dwelling Units in the Urbanized Area shall be increased as rapidly as possible in conformity with this judgment order.

VI. On the 15th day of March and September of each calendar year following the date of this judgment order, CHA and HUD shall, respectively, file with the Court and serve upon counsel for the plaintiffs a report of the activities carried out to implement the provisions of this judgment order. Such reports shall be prepared in such manner as to inform the Court as fully as possible

concerning the progress being made in, and the existence of any obstacles to, such implementation, and shall include any recommendations for further action as will in the opinion of the reporting party aid in such implementation.

VII. This Order shall be effective from and after the date hereof and shall remain in force and effect until an aggregate of 60,000 Dwelling Units has been provided pursuant to the provisions hereof and of this Court's judgment order of July 1, 1969, entered in this cause.

VIII. This order shall be binding upon HUD and CHA, their officers, agents, servants, employees, attorneys, and their successors, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IX. This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed developments designed to achieve results consistent with this order, material changes in conditions existing at the time of this order, or any other matter.

ENTER:

[Not Signed]
United States Judge

Dated: ——————————, 1972

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FROM TRANSCRIPT OF
SEPTEMBER 28, 1972

* * * * *

[132] PHILIP M. HAUSER,

called as a witness by and on behalf of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POLIKOFF:

Q State your name, please.
A Philip M. Hauser.
THE REPORTER: Spell that, please.
THE WITNESS: Hauser, H-a-u-s-e-r.

BY MR. POLIKOFF:

Q What is your occupation, Mr. Hauser?
A I am a professor of sociology and director of the Population Research Center at the University of Chicago.
Q What is the nature of the current work you do in those two capacities?
A Well, I teach demography, conduct research in the general field of population and urbanism.
Q What is your education, briefly?
A I have a Ph.D. from the University of Chicago, two honorary degress, an LL.D. from Loyola University and an L.H.D. from Roosevelt University.
Q Can you quickly give us your past employment [133] history.
A Well, I started teaching back in 1929, spent some ten years in Washington where I served in the Bureau of the Census, became Deputy Director of the Census, came back in 1947, was Acting Director of the Census in '49 and '50, served also as Assistant to the Secretary

of Commerce and Director of the Office of Program Planning of the Department of Commerce, served as U.S. representative of the Population Commission of the United Nations, and have, in general, stayed at the University of Chicago since my return in 1947.

Q Have you authored any books or articles in the field of population trends or demography?

A I have, more than a dozen in the way of books and quite a number of articles throughout—technical journals.

Q Are you a member of any professional societies?

A Yes, quite a large number.

Q Do you hold an office in any of them?

A Yes. I am a past president of the Population Association of America, of the American Statistical Association, of the American Sociological Association, Sociological Research Association—

Q And others?

[134] A And others.

Q Have you served the City of Chicago in any way?

A Yes, I have served as a consultant to the City of Chicago, the old Department of City Planning, the Department of City Planning and Urban Development, as its name has changed, was a consultant for the report to which you referred a short while ago on the Comprehensive Plan for the City of Chicago.

Q You are referring to this blue covered document that is in evidence as Plaintiffs' Exhibit 9 of April 5th?

A That is right. My name is listed as a consultant at the end of that volume.

Q Are you generally familiar, Professor Hauser, with the judgment order that was entered in this case in 1969, and particularly with the three to one location ratio provision and the buffer zone provision of that order?

A I am. I have read the order and I have read what has happened about it since in the press.

Q I am sorry?

A As reported in the press.

Q Are you familiar with the—well, as Judge [135] Austin normally would have told you at that point, you can't rely on that as—

A Well, I read the order itself.

Q The order itself you can rely on.

A Right.

Q Are you generally familiar with U.S. Census statistics for 1960 and 1970, particularly as they relate to Chicago's white and non-white population?

A I am.

Q According to the 1970 Census figures, Professor Hauser, what is the white and the black population of Chicago?

THE COURT: Percentagewise you mean?

MR. POLIKOFF: Both, absolute and percentage.

THE COURT: All right.

BY MR. POLIKOFF:

Q If you have them.

A I have them.

Q And you are referring to some notes, are you, at this point on the figures?

A Right. I am reading from tables taken from the census reports.

Q Thank you.

A The total population of the City as of 1970 [136] was reported as 3,366,000 and some.

The white population was 2,207,767.

The Negro population was 1,102,620.

Q What are those percentages for Negro and white?

A The white population made up 65.6 per cent of the total in 1970, and the Negroes 32.7 per cent. The remaining 1.7 per cent to make 100 per cent were other races.

Q What percentage shift does that represent for white and blacks since the 1960 Census?

A Within the decade from '60 to '70 the black population increased by 35 per cent, while the white population diminished by 18 per cent.

Q How is that increase in the black population accommodated within the City in terms of residents?

A Well, the pattern between 1960 and '70 was essentially the same as all the time we have been tracing it in my research center since 1920, and that is through an

expansion of what was already predominantly a segregated Negro area into adjoining zones.

This has continued from the time the Negro population first came to the City of Chicago, and between '60 and '70 the black population increased in precisely the same pattern that it did in preceding [137] decades.

Q You referred to, I think, adjacent zones, is that—

A I used adjacent zones—

Q You mean geographically

A Adjacent city blocks, adjacent census tracts, adjacent communities, to refer to all three of the area units in which we divide Chicago.

Q And by expansion you mean the changeover, the transition in such a zone or neighborhood from predominantly white to predominantly black population?

A That has been the basic pattern.

The black population has increased in total number by reason of a whole series of factors, including the limited housing market for blacks in Chicago. The expansion has necessarily been out of and immediately adjacent to the areas already black.

Q Why is the location of the neighborhood you are talking about relevant, the immediately adjacent factor that you referred to?

A Because that has been the line of advance, the avenue of expansion of the black population with increased numbers of blacks, and the immediately adjacent area to where the Negro already resides is therefore [138] the critical area subject to the massive transition to which, as a matter of fact, the Comprehensive Plan for the City of Chicago refers.

Q Well, is the phenomenon, the social phenomenon different in the neighborhood that is not immediately adjacent to an area already largely occupied by blacks?

A Very definitely so. The evidence indicates that the areas beyond the immediately adjacent areas tend to be relatively relaxed and are not subject either to penetration or to the whole series of processes which result eventually in succession, that is the white neighborhood becoming entirely black.

There is an interesting element involved here and a rather ironic one, and that is that there is no doubt, and this is not unique to the City of Chicago, that resistance to integration and residential segregation means that white communities, neighborhood after neighborhood, have been wiped out as the black population has increased as if struck by a tidal wave. It is an ironic fact that to refuse to integrate on a residential front results in a complete elimination of the neighborhood. This has been the pattern since 1920 and it is still going on.

Q Incidentally, Professor, is Chicago a residen- [139] tially segregated city or relatively speaking, that is, compared with other cities, relatively unsegregated residentially?

A Well, we have calculated segregation indexes for Chicago and most cities and metropolitan areas of the United States over many years. Chicago is the most segregated of any of the large northern cities in the United States. Actually, Chicago's segregation index has gone up while segregation indexes of other cities of a million or more have gone down.

As of 1970 the segregation index, which I had calculated only yesterday by census tracts, is over 90, and what that segregation index means is that in Chicago, as of 1970, it would be necessary to move more than 90 per cent of the black population if their distribution was to match that of the white population.

Q Is that index for Chicago higher than it is for other cities in the north?

A Oh, yes. New York, for example, has an index of about 78.

It is higher than that of any city of a million or more and higher than any large city in the north.

Q Now, Professor Hauser, based on the Chicago [140] demographic facts as you know them to be, and census figures, do you have an opinion as to what the effect would be of eliminating the buffer zone provision from the Court's order of July 1, 1969?

MR. O'BRIEN: Your Honor, I object to this. There has been no foundation laid for asking this witness a

hypothetical question directed to low income family public housing.

THE COURT: The objection is overruled.

BY THE WITNESS:

A Yes, I have an opinion.

There is no doubt in my judgment that the effect of the elimination of the buffer zone would be precisely the same as that which has characterized housing policy through the CHA in this city ever since the CHA was created, of reinforcing the pattern of racial segregation.

The elimination of the buffer zone simply means that there would be business as usual with black penetration in a white community resulting in complete inundation and this massive transition from white to black population.

BY MR. POLIKOFF:

Q Is it possible, Professor Hauser, that that [141] will happen anyway?

A This is quite possible because the problem of segregation, as we are all quite aware, is a quite complex one.

The two elements which probably operate more powerfully than any other forces, and what has occurred in Chicago and in other central cities in the metropolitan United States are those forces implicit in segregated housing on the one hand and segregated schooling on the other. In the City of Chicago the policy and public action have been such as to definitely reinforce the racist segregated pattern that we have had ever since we were —had diverse population groups come into the area.

Q In your opinion, Professor, does it tend to maximize or deminimize the chances of preventing it from happening in this buffer zone area if we keep the buffer zone provision in the order?

A In my judgment all the elements of Judge Austin's order represent, as I see it, a remarkably fresh basis for hope that the trend towards the apartheid society we already have, more so in Chicago than in any other large city in the United States, that the trend toward an apartheid society might be halted or at least [142] delayed.

I think that order, as I understand it in the context of population distribution in the United States, holds forth a promise of something interrupting what is already and is increasingly becoming completely an apartheid society with black central cities surrounded by lily white fringe white population.

Q Do you have the same opinion with respect to the effect of a reversal of the 3-to-1 ratio provision of the order?

A Well, the reversal of the 3-to-1 ratio would have an interesting consequence. With a segregation index of over 90, the reversal of the 3-to-1 ratio would in effect say that 75 per cent segregation is okay. It would tend to reinforce in that direction. So that a reversal of the order so that it would be to some extent an improvement over the facts as they now exist actually would tend to continue to reinforce the segregated community we already have.

A 3-to-1 ratio—there is nothing sacred, incidentally, about those numbers, it might be 2.5, 3.5. The ratio is obviously an arbitrary one.

What is significant and what is, I think, refreshing, if we are to assume that the United States [143] is to live in an integrated society in which all minority groups have the option to live where they please, a pluralistic, democratic society, what is significant about this ruling is that it embodies a policy which would break the established pattern which CHA—and may I say the Board of Education on the educational front in Chicago have been consistently reinforcing it now over the last several decades.

MR. POLIKOFF: No further questions, your Honor.

THE COURT: Any cross?

MR. O'BRIEN: Yes, sir.

First of all, your Honor, before proceeding to cross, I move to strike it all as apparently being offered on our motion which is not before the Court and which your Honor said he wouldn't hear. Your Honor said that. I read it. So I don't know why this—

THE COURT: I said I wouldn't hear it in August.

MR. O'BRIEN: And I was never served with any notice that they were calling it up.

I made by objection and I will proceed with cross subject to my objection.

[144] THE COURT: All right.

The motion to strike is denied.

CROSS EXAMINATION

BY MR. O'BRIEN:

Q Professor Hauser, you stated, I believe, that the CHA has been long and well known for racial segregationist policies; is that your testimony?

A Well, you are using words other than what I used.

I don't think the CHA created racist segregated policies in Chicago, but there is no doubt in my mind that the policy of CHA and the actions of CHA have reinforced that policy and that fact.

Q You are aware, sir, are you not, that for many years and up until this year, as a matter of fact, final approval of all sites selected by the CHA was made by the City Council?

A I am quite aware of that, and I would certainly say CHA was merely the instrumentality.

What you are getting at now is why do we have this policy. I would say that responsible is the superb nonleadership of the Mayor of the City of Chicago, Mayor Daley, the City Council which he controls, the [145] CHA commission which he controls; this is the whole sequence of events within a framework, of course, of federal law.

Q Now, sir, are you aware that in this case Judge Austin held as a finding of fact a few years ago, true as the law of the case, and this is at 296 F. Supp., page 914, "In view of CHA's persistent selection of white sites at the initial stage before the preclearance procedure and the candor of its officials on deposition, these statements are undoubtedly true," and the statements held by Judge Austin to be undoubtedly true are the statements that CHA officials never entertained racist attitudes and that the racial character of the neighborhoods

has never been a factor in CHA's selection of a suitable site."

Were you aware of that finding, sir?

A I have not read it and I have not been particularly aware of it in those terms until you just said it, but—

THE COURT: I am sure that Mr. O'Brien wouldn't mislead you, that that is the order.

THE WITNESS: No.

BY MR. O'BRIEN:

Q You just never heard that before?

[146] A No, I haven't heard that, but may I say that I know that, I know that CHA has acted within the framework which required approval of sites by the City Council.

Q Now, sir, you testified on direct examination as to the effect of shifts in black population and how when there is a leapfrogging effect your studies reveal there tends not to be this collapse of a neighborhood overnight, turned from white to black—I shouldn't use the word "collapse"—overnight change.

A I didn't so testify. I expressed it as my judgment that where there is such a leapfrogging that it may well have the effect of slowing down any possible exodus.

As a matter of fact, I think if one were to put this in its total context, if it became perfectly clear, and this was a matter of public policy, as is stated in the Comprehensive City Plan of Chicago, beautiful prose which has been completely ignored, if it were clear that there was absolutely no community in the City of Chicago to which blacks, and including low income blacks in the public housing was immune, then I think the question of leapfrogging and the question of exodus might well diminish. Moreover, that would even be more the case were it perfectly clear [147] that there were no escape hatches in the entire metropolitan area.

In my judgment it is possible to deal with this problem within the City of Chicago, but an ultimate final solution of the problem of integration can come only if we

recognize the reality of the entire metropolitan area as being the functioning unit of Chicago.

We are still plagued with Eighteenth Century forms of City Government, of which the City of Chicago is one horrible example.

Q You are aware, sir, are you not, that the order, the basic judgment order in this case, says in effect that when a unit or units, let's say a three-flat is built in an area that is white, the general area, that neighborhood residents are entitled to I believe it is 50 per cent priority. You know that?

A Yes.

Q Now, sir, do you know of any studies that instead of talking in terms of black and white, the impact of leapfrogging, introducing into new neighborhoods, et cetera, do you know of any studies, sir, that deal with public housing being introduced in a middle class or upper middle class neighborhood?

A Yes, there are some such studies and some [148] that have worked out very well.

Q Do you recall any, sir?

A There are communities in Baltimore and there are communities in seven other parts of the country, which I would have to consult my notes that I don't have here, in which this has occurred and with success. In fact, there is a community in Illinois, I believe Rockford, where there has been such successful integration as well.

Q Yes. Do you know of any situation involving a city the size of Chicago, surrounded as it is by the large all-white metropolitan suburban area?

A None to my knowledge; none to my knowledge.

As I said earlier, we are here on a frontier and it is not possible to answer that type of question because the pattern of not only Chicago but the U.S. has been of a racist pattern in which blacks have been segregated in central cities, and to me the significant thing about this case is that we may have a breath of fresh air which might point to something that would break the apartheid society we created.

Q Do you know of any studies, sir, that deal with the subject of fears other than racial fears, fears, for in-

stance, of an invasion of a middle class [149] neighborhood by what for lack of a better term I would call lower class people.

A Yes.

Q And there are students, are there not, in this general area of sociology who believe that class fears may be as important, if not more important, than racial fears, for whatever irrelevant and irrational reasons.

A There are, yes.

Q And on your direct testimony you were basing your views on the black and white situation.

A Yes.

Q Do you know, sir, for instance, the percentage of people on welfare that live in Chicago Housing Authority units?

A Oh, I don't happen to have that figure in mind. I know about 21 per cent of all black families in Chicago are on welfare, twice the load, twice the rate or incidence which is true for whites, and in CHA—I published a book on this, incidentally, in 1956 in which I have the data at that time. I don't happen to have it in mind at the moment. My guess would be perhaps a third to a half and perhaps even more.

[150] Q Do you have an opinion, sir, as to the effect of the introduction of a very substantial number of units of public family housing in white neighborhoods, middle class neighborhoods of Chicago, where there was not anywhere around Chicago any kind of a public housing program?

MR. POLIKOFF: Just a moment, please.

MR. O'BRIEN: I am just asking if he has an opinion.

MR. POLIKOFF: I would like Mr. O'Brien to define what he means by "very substantial" so the question will be clear to me and the witness.

THE COURT: And what "anywhere around Chicago" means.

BY MR. O'BRIEN:

Q Let's say 10,000 in the City of Chicago, none for Evanston, none for Skokie, none for Highland Park,

Glencoe, Flossmoor, Winnetka, Barrington Hills, et cetera. That is what I mean.

A Well, I have an opinion and I think I should state on what it is grounded. The opinion is, and here again I am describing what has been the actual pattern and the pattern that still exists throughout metropolitan United States, including the Chicago [151] metropolitan area.

The pattern is one—and I can go into great detail if the Court should desire—by which as we say in sociology the population over time becomes stratified in space by social economic status, and that can be translated into English. What it means, in every metropolitan area in this country them that has it has always lived farthest out, because farthest out is where the newer, more desirable housing was and the housing market is a competitive market. People are distributed in accordance with their ability to buy the type of housing they desire.

I am familiar with the attitudes of resentment on a class basis. In fact, there are some cases pending now, as I understand it, that are going to raise the same questions about whether it is legal to exclude people on the basis of income or class. The courts have struck down segregation on the basis of race, language or origin and the economic one is before the Court.

Now, my point is this, that any middle class white community that resents, and I am quite sure you are right when you imply they will resent the ingress of lower class, and particularly black lower class, [152] which is regarded as something worse than just lower class, and I don't think there is much debate about that, is very much in my judgment in a position of the chap who committed matricide and patricide and then threw himself on the mercy of the Court because he was an orphan. Now, all these evidences of pathology which are implicit in your question and which are admittedly there, in the black community, are the product of the smugness and the complacency and the racist policies of the middle class white community to which you are referring. And the question is, are we going

to consistently follow that policy or are we going to break it, and Judge Austin's order is one way to break it.

THE COURT: My order, Mr. Hauser, had to do with first making a determination that there had been discrimination in the City of Chicago by the CHA over a 20 year period, and the next in regard to units that that were built for residents of the City of Chicago upon the request of the City to the Government for money for that purpose, and as a remedy all my order did was to require that from now on you can't do it like you did. That is all my order did. I am not building any [153] houses. I have no money.

MR. O'BRIEN: Neither does CHA.

BY MR. O'BRIEN:

Q Well, Professor Hauser, you have mentioned the statistics with respect to the total population of Chicago and the increase in the percentage of blacks and the decrease in the percentage of whites. It is true, is it not, sir, that in general the whites are going to the suburbs?

A Yes, towards the periphery of the City first and into the suburbs since the City has been reasonably filled up.

Q And forgetting the reason, putting aside all the reasons for the moment, is it not true, sir, that irrational fears of black people has caused a substantial amount of this migration of whites?

A In part, but remember this, that the actual outflow of population from the inner city, first to the peripheries and as the City filled, to the outlying suburbs, this has been true ever since Chicago first appeared in the Census in 1840, and before there was a racial problem you had precisely the same kind of movement outward by reason of the rapidity of the growth of the City, the fact that the newer and most desirable [154] housing was always farthest out, and while there was still a lot of land within the City, this same movement outward was still taking place within the City, and over time, as a matter of fact, spurring

this what I think is the more basic economic motivation has been various ethnic and racial motivations. There was a time when people fled because they didn't want to live with the Irish, they didn't want to live with the Poles, they didn't want to live with the Jews. At the present time they don't want to live with the blacks, but the economic base of this, the fact that better housing and along with it, until recently, better housing and along with it, until recently, better schooling and so on, was in the suburbs is part of what led to this movement.

Q And so the rise of economic status, the assimilation of various ethnic groups you think has contributed, it is hard to measure how much, to this movement that you referred to?

A Oh, no doubt about it.

Q Yes, and also contributing to the statistics about the population of the City of Chicago, sir, has involved, has it not, the immigration from other parts of the country of black citizens to the City of Chicago, or has that died off? I am not sure.

[155] A Well, inmigration, we call it.

Q Yes?

A Inmigration across national frontiers, yes, this has sloughed off.

If you go back to the decade of the forties, during the War, the increase in black population was about 75 per cent inmigration and only about 25 per cent natural increase, excess of births over deaths. That has sloughed off to where it was less than half in the decade of the fifties, and I haven't seen the latest—there is a little calculation involved to do this—but the chances are that the increase in black population through inmigration during the sixties, between '60 and '70, was probably less than a third, probably less than a fourth.

Q Now, sir, drawing upon your experience in sociology, the study of demography, geography, population trends, teaching and study, wouldn't it be true, sir, that what I will call for lack of a better term a blue collar, lower middle class neighborhood that is white

and composed of three-flats would react more adversely than would a university community of upper middles, whites, three-flats, to the introduction of a three-flat building for low income public housing? Do [156] your studies indicate that people react differently depending on who they are, what their background is?

A In all probability. But then we must take—

Q In all probability what, sir?

A In all probability that is correct, that is that you would get the more hostile reaction from the blue collar worker than from the more educated and higher, more affluent families.

However, I think this must be qualified by this consideration, and that is if the public housing were to follow the pattern that it has in Chicago and elsewhere in the United States, unlike that, for example, in the United Kingdom where public housing is built so that everybody knows it is public housing and it is built in a manner incompatible with the style, the architectural style, the pattern of life and so on, in such a community—now, housing doesn't have to be in that pattern, so I would say part of the problem here is that the housing program in Chicago and in this country as a whole has not been particularly astute from the standpoint of trying to get it accepted by the broader non-public housing population.

Q Yes. And you are aware, sir, I take it, of the current new look in public housing, if the [157] money ever comes through, et cetera, of the Chicago Public Housing Authority. You have seen those brochures of those houses that are indistinguishable, I think, from ordinary mine run housing.

A That would help, there is no doubt about that.

Q Now, sir, have you been involved as a consultant at any previous stage in this matter with either side or the lawyers for either side?

A Yes, I have been consulted by Mr. Polikoff in the past with respect to what the Census data are, the distribution of population, concentration, segregation indexes, and so on, and I have made the facilities of my

population research center available to him, as I do to anyone who makes inquiry for it.

Q And were you consulted in connection with the terms of the 1969 judgment order at or about the time prior to its being signed by the Judge?

A Yes, yes, I was.

Q As a matter of fact, was the text of the order as proposed to the Judge submitted to you before it was submitted to the Judge, so far as you know?

A Oh, I saw some drafts along the way. I don't know whether I saw the draft that was submitted to the Judge.

[158] Q And did you, sir, participate in the drafting or any part of the drafting of the judgment order?

A Not the drafting, although I provided information on the basis of which the actual statistical determinations and so on were made, yes.

Q Did you, sir, discuss the 3-to-1 ratio prior to July 1969 with Mr. Polikoff, and the buffer zones?

A Yes.

Q And did you in fact make recommendations to Mr. Polikoff with respect to the buffer zone and the 3-to-1 ratio?

A In terms of the general principles, yes, not the specific ratio. As I said earlier, this is arbitrary. It is the principle that it embodies. Yes, this was discussed.

Q Did you discuss 2 to 1 with him, do you recall?

A I am afraid that at my age that kind of detail, several years ago, is just not—I can't be responsive to it. We may have. We talked about various ratios. Whether it was 2 to 1 or not, I can't recall.

May I say one can make a case for 2 to 1 or 4 to 1. It is a question of the principle that is involved and the extent to which you want to support the principle.

[159] Q Now, sir, we discussed buffer zones in a general way and we have discussed the impact of this transitional area; have any studies shown what area it is that can be deemed a transitional area? One reads about a certain street being considered—about Ashland Avenue, I have read about it in the paper. Ashland Avenue is about 40 feet wide, I presume, not a mile.

A Well, may I say that over the years the University of Chicago, and in one of the units which I direct, the Chicago Community Inventory, the specific one is now over 25 years old, has used Chicago as a laboratory and we have made very intensive studies of the manner in which the City was occupied by newcomer populations, the white ethnic groups, and also more recently the black groups, and these books, I have three of them here done by former students and colleagues of mine in my research center and for which I have written the forewords, trace the story; for example, the Negro occupancy in the City of Chicago since 1920.

A series of maps I think will answer your question perhaps more eloquently than anything I might say.

Q Is there one particular map, sir, that you [160] think would be an eloquent answer?

A Yes. There is a whole series of maps. This shows the Negro population in the City in 1920.

Q No, sir. My question is, you have used the phrase "an area of transition."

A Yes.

Q The Court order of 1969 sets up what we call a buffer zone which is one mile.

A Yes.

Q Could it not be, sir, three blocks and serve a reasonable purpose as a buffer zone? Could it not be a half a mile?

A Here again this is an arbitrary thing. You could argue perhaps it should be nine-tenths of a mile or 1.1 mile, perhaps as low as a half a mile. I would be suspicious about anything as small as a half mile for this reason; a zone in transition in Chicago, as every successive census has shown since 1920, an area that was part black, census tract, let us say, or block, part black in one census was integrated only until the next census came along by which time it was all black, and that is the process by which blacks have occupied that part of the city which they now occupy. There is the immediately adjoining zone—partly because of [161] restrictions, there was restrictive covenants before the Supreme Court struck that out, there has been since and there still is operating

quite a separate housing market for the black community and for the white community in Chicago or the suburban community, and those distinct series of factors have made it possible in the main for black population to expand as its numbers increased only into adjoining areas. This has been a pattern since the twenties.

Q I take it you believe and deem it to be valid when discussing population movements and trends of the sort we have been discussing to deal with factors such as ethnicity, meaning white ethnics, income class or class of person as well as color, do you not?

A Oh, yes.

Q And, sir, do you know of any, let us say, upper middle class black neighborhoods in the City of Chicago?

A Yes, yes, the south of where I live in Hyde Park, Avalon, South Shore, beyond that farther south, yes, Kenwood, which is to the north of the neighborhood in which I live.

Q Do you know, sir, whether those inhabitants [162] of those neighborhoods have tended to behave in the same way as whites of their same class with respect to movement to the suburbs?

A In general, yes, although on a much more limited extent. It is a rather interesting thing, such studies that have been made indicate that the middle class-upper class black, when he comes into a community generally doesn't follow quite the same patterns as the white he replaces, he is a notch above them because he has had trouble getting there in the first place. He hasn't had the freedom that his own economic status may have provided him with. And then there has begun an exodus to the suburbs, in fact something over 70 per cent increase in black population occurred in the suburbs of Chicago between 1960 and 1970, but from a very low base. There is still only about three per cent of the suburban population is black, even though they have had a very large percentage increase.

Q Is not that percentage increase of the black population in what are deemed the suburbs been fairly significantly affected by the creation of all black suburbs?

A Yes, to some extent, and in the suburbs, in [163] keeping with the pattern within the city you have had also, if you are talking about the predominant mass of the black population, you still find segregation in the suburbs as well, yes, although there are increasing evidences of integration particularly on the part of the really affluent blacks who can, say, buy their way into Glencoe where you do have this sprinkling and you do not have segregated patterns.

Q Now, sir, do you recall any discussion of the buffer zone with Mr. William Barry of the Urban League?

A Oh, I don't recall the precise discussion we had, no, although Bill Barry and I have talked about this many times. We see each other quite a bit.

I don't know what particular statement you are referring to.

Q Now, sir, is there such a community as the University of Chicago community? Is that a fair description of some neighborhood on the south side of Chicago?

A Oh, in a kind of a literary way I suppose. We divided the University of Chicago to—really gave nomenclature to and divided the City into 75 communities, as they are called, one of which is Hyde Park, another Kenwood to the south of Hyde Park, Woodlawn, but to the [164] extent that there is a university community, and I suppose one can say there is because about 80 per cent of our faculty lives within walking distance of the university and the concentration is especially heavy in Hyde Park.

Q Now, sir, trying to put aside your own particular views which you have expressed very well, is there, in this community that you described, is there a significant amount of public housing, if you know?

A "Significant" is a weasel word. There is some public housing. There has been some dispersed public housing put within about a half mile of where I have my house and this is part and parcel of the new policy.

Is 47th Street significant? You have got some new housing going up there for both middle income as well as low income people.

State Street is within a mile and a half away. Certainly that is not in the Hyde Park area but of course, State Street, you have this heavy concentration. You have got some dwelling authority construction right on the midway just at the edge of the Hyde Park area.

I think the answer is no, there isn't any [165] significant public housing, and that is in keeping with what is true of what have been predominantly white neighborhoods.

Q Now, sir, with your professional background you are aware, are you not, of the fact that on the south side of Chicago and the west side of Chicago, areas that fall within the limited public housing area, there is at present, for whatever reason, vast acreages of totally vacant land, is that not true?

A That is true.

Q And you are aware, sir, are you not, that at one time in the recent past most of that vacant land was occupied by structures in which people lived and had housing on it, some time in the recent past, are you not?

A Also true.

Q And isn't it true therefore, sir, that in the area that falls within the limited public housing area there has been in the recent past a diminution in the supply of housing?

A That is true.

Q Due to a whole host of programs?

A That is true. It is true throughout the country, by the way.

[166] Q It is true generally, sir, is it not, in the central city, the older part of cities?

A Yes.

Q And in Chicago that area in which all this vacant land exists that we have been discussing is in the limited housing area?

A Yes.

Q Now, sir, do you deem it relevant or irrelevant—strike that.

It is a factor, is it not, sir, that there tends to be flockings of people, for whatever reason, that we have historically neighborhoods of Italians and Greeks and

Irish and Germans and Filipinos and Puerto Ricans and blacks?

A This is true, though I should say that now you are in the realm of what we have conducted a number of researchers right in Chicago and the segregation indexes of these white ethnic groups was never more than about half as high as the segregation index of the blacks. Moreover, as we have traced their movements over time, and we can show you quite a bit of detail on that if you want them, it is true that over time you get to a second generation, a third generation where the visibility of the newcomer white ethnics [167] has pretty much been dissipated.

They have had the option to continue to live in such enclaves or to leave their enclaves and live in, say, an integrated fashion. In the second and third generation of blacks in Chicago they have not had that option. They do flock together. In fact, to my mind it is ironic that much of the debate about open housing, and we have had bloodshed literally over it, was in a sense completely unnecessary because were there complete freedom to move, in my judgment the black would still predominantly live as an enclave, but the difference is that they have not had and do not yet have the option to move out as the white ethnics had.

Q Right, but your studies suggest, sir, based on other groups, as you just stated, I believe, that there is this tendency among blacks as other groups that even given freedom, mobility, you can anticipate a very substantial amount of flocking without putting a number on it.

A That is right, but then the other half of it is that you can also anticipate a substantial proportion who want the option to move out. You have got both in every ethnic and every racial group.

Q Now, isn't it true, sir, that the flight to [168] the suburbs, which I will call it for lack of a better term, will be hastened and not lessened by the introduction of thousands of low income family public housing units in the white neighborhoods of Chicago without introducing any such units into the suburbs around Chicago?

A Well, that is a hypothetical question and my guess is this might well be the case, which is why I said what I said earlier about the problem essentially in the long run having to be a metropolitan-wide problem.

On the other hand, the exodus is, again, in sort of literary language, you know, we always talk about the flight from the city when the fact is that every city, and especially Chicago which has been much studied in this respect, has witnessed the population moving outward from the center as the economic status rose, and when we talk about the flight to the suburbs or flight from the city, we are talking really about a half truth. It is a half truth, as Oliver Wendell Holmes, your Honor, one time said, "A half truth is like a half a brick, you can throw it further," and it is circulated pretty widely. But all the time the people were moving outward others were coming in and the net effect was the City continued to grow.

[169] Now, moving out entails quite a bit of problems for any family in terms of investment, in terms of financial ability, schooling for children, interruption of friends, et cetera, et cetera; so that I think all in all, in my judgment, the difference between having dispersed public housing within the city, if it were clear there was no community within the city, while it might accelerate it some, I think it would be a relatively minor factor in the more basic forces that account for the distribution of population within the city and within the entire metropolitan area.

Q Professor Hauser, are you a member of the American Civil Liberties Union?

A No.

Q Have you been or have you ever held any post with the American Civil Liberties Union?

A I have never held any post, but I don't think I have ever been a member. I have made contributions from time to time to the Civil Liberties Union. I don't regard it as a particularly dangerous and undesirable organization. I am not afraid of them.

Q Are you aware, sir, of any groups of citizens that—I think you were in the courtroom this morning—that are

suggesting sites to the Chicago Housing [170] authority?

A Only from what I have seen in the press. I have no direct knowledge or special knowledge about it at all.

Q Do you know of any group composed of people connected with the University of Chicago who are active in that activity?

A No, although I know groups that might conceivably be engaged in such activity without my knowing about it.

I have spent much of the last few years, about half the year in Asia or Europe and so I am not in complete touch with what is going on immediately, but if there is anyone doing it in Chicago, my guess is that it would be through our center for Urban Studies, and you might inquire there. I just don't know, which is not equivalent to saying it is not going on.

Q I see. Thank you.

MR. MURRAY: Your Honor, at this time we will reserve any cross examination from the Department of Housing and Urban Development of Professor Hauser. We have received answers to our interrogatories concerning the Metropolitan Plan that was filed with this Court on September [171] 25th, 1972, and which has designated Mr. Hauser as an expert witness at the hearing on October 24th, 1972. Rather than prolong this hearing and since we have just received this information we would like to reserve any cross examination to the extent that any of his testimony is relevant for purposes in support of plaintiffs' order on metropolitan-wide housing program.

THE COURT: All right.

MR. POLIKOFF: I have no further questions.

I have one last witness who will be five minutes, your Honor.

THE COURT: All right, put him on.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FROM TRANSCRIPT
OF NOVEMBER 27, 1972

* * * *

[12] MR. POLIKOFF: * * * Let me turn to the second of my four points; what is the evidence going to show, in a very general way, about the issue as I have now stated it? The issue again, what is necessary or appropriate to bring about this full opportunity, this option that I mentioned?

There are two proposed orders before Your Honor. Each of them is supposed to provide full relief. The Plaintiffs' order is a comprehensive plan which involves the HUD Public Housing System in the Chicago urbanized area. It is a way of making low income housing opportunities in nonblack neighborhoods available to members of the [13] Plaintiff class in addition to the housing opportunities that are to be made available within the city under Your Honor's previous order.

THE COURT: This, however, embraces, unquestionably, on a non-voluntary basis, right?

MR. POLIKOFF: Well, it depends on what you mean by "non-voluntary".

THE COURT: Well, I mean, there has been 500 openings for 41 months, none of which have been submitted to the Court. That was on a voluntary basis.

MP. POLIKOFF: Now, which openings is Your Honor referring to?

THE COURT: I am talking about the 500 that could be placed in the—outside the city limits.

MR. POLIKOFF: I see. That is correct, Your Honor. In that sense it is on a non-voluntary basis.

THE COURT: I mean, this, of course, is on a voluntary basis.

MR. POLIKOFF: CHA, under the order, would be obligated to try to put the housing out there. Under the

order it simply, as you put it, is voluntary with them whether to try or not, that is correct.

THE COURT: Well, there has been some evidenece from CHA that they, from time to time, were [14] endeavoring to find some units outside the city limits.

MR. POLIKOFF: Without success.

THE COURT: Without success, and of course, it was their position, being a creature of the city administration, to put as many of them out there as they could and thus make everybody inside the confines of the City of Chicago happier.

MR. POLIKOFF: So far they have put none out there.

I want to point out one additional difference between the voluntary provision you are referring to and what is in the Plaintiffs' proposed order.

THE COURT: Well, I am concerned about if there is no more success than there has been for the last three and a half years, you are not going to let it rest on a voluntary basis, I don't think.

MR. POLIKOFF: Well, I have already said it is not voluntary in the proposed order, but there is one additional difference—that is it is not voluntary in the sense that CHA is obligated to try. It is all voluntary in the sense that Congress, by not appropriating money, can make this whole thing academic. It is voluntary in the Congressional sense.

[15] But there is another difference that I want to mention to Your Honor. Those 500 units under the first order reduced, if they were successful in putting them out there, reduced the number that had to go in the city.

THE COURT: That is right, and I am sure that that would give comfort and joy to CHA, to dump as many as they could outside the city limits.

MR. POLIKOFF: I assume so.

Now, we have changed that in the proposed order, Your Honor. It no longer would reduce what goes in the city. The Plaintiffs' proposed order says that in addition to the required number in the city, the required number being whatever Congress appropriates funds and HUD allocates units for, they shall, in addition to that, make an additional application for additional units to go into the

urbanized area. That is an important change because, Your Honor, they aren't subject to the obligation to try to put units out there until units are made available by HUD for within the city. In other words, HUD's opening the pipeline for units to flow into the city is what triggers the CHA's obligation to try to get them into the suburbs as well.

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[49] MR. POLIKOFF: • • • My last point—I have taken care of three of the four points—the last point was the power of the Court. You know, we are asking you to cross local political boundary lines. Does the Court have the power to do that? And even if you do, is this a proper case in which to exercise that power?

In answer to those two questions—but let me clear away two possible misconceptions first about our proposed order. The purpose of the proposed order is to provide housing for city residents, for members of the Plaintiff class as a necessary part of the relief that they are entitled to. The purpose is not to provide housing for suburbanites. It is not to provide housing out there in suburbia just because it might be nice to do it. It is to provided housing for the Plaintiff class, to provide housing for them out there because it is necessary to provide it out there to be effective inside the city.

[50] It is true under the proposed order 50 per cent of the units will be available to local residents, and they will be suburbanites, and they are not members of the Plaintiff class, but under the existing order—

THE COURT: And you, I guess, are pretty sure that there won't be any rush of those suburbanites to get into those housing complexes.

MR. POLIKOFF: I anticipate a rush, Your Honor, quite to the contrary. You know from the statistics you have previously been seeing that most of the poor in this metropolitan area are white and not black. In fact, as one of the exhibits will show, Your Honor, of the 12—I think it is an even dozen public housing projects in the Chicago urbanized area today, 11 of them, 11 of them are in what we would call the limited public housing area

in Chicago. The twelfth one, which is in a white area, has a fair percentage of white residents.

As Your Honor said in 1969, the whites have been denied access to public housing just as much as the blacks, and if housing is provided in a rational way in the suburban areas, I think those other 50 per cent of the units would be filled.

The purpose of providing that 50 [51] per cent is exactly the same as the purpose of providing the 50 per cent on the inside Chicago order, namely, to provide for integrated projects and community acceptability. There, too, you provided that 50 per cent of the units could go to people who are not members of the Plaintiff class. So that is one possible misunderstanding I wanted to clear up. We are not talking about putting housing out there because it is a nice idea, because some planner says so, we are talking about it because it is necessary to preserve the effectiveness of your order in the city.

The second possible misconception is that the Plaintiffs' order would impose requirements on and in effect enter orders against municipalities and housing authorities that are not parties to this case and have not themselves been found guilty of any discrimination of wrongdoing, and that is a misconception. That is not so. Why isn't it so? First, it is not so because the proposed order does not make any finding with respect to those entities and does not order them to do anything. That is down the road. This present order—

THE COURT: That is down the road until you run into a roadblock, then you come in and set aside [52] this and set aside that, none of which was adopted to bring about the keeping of blacks out or keeping low income housing out.

MR. POLIKOFF: What you have said is correct and I agree with it, and it is also true, and Your Honor knows it to be true, I believe, because we have argued this in connection with the City Council veto power, there isn't any requirement that those provisions had to have been adopted in order to discriminate or to keep blacks out. The only requirement is that Your Honor decide on the basis of evidence that it is necessary to set

those two provisions aside. It is not this and that and something else, it is only two provisions, to set those aside in order to provide relief.

Let me give you an example: In one of the cases that we relied upon and, indeed, that you nave cited, we supplied the citation, it appears in the order of April 10th, what is at issue in connection with a faculty desegregation case is a state law that gives teachers certain tenure rights, certain rights not to be assigned to other schools against their will. The Federal District Court orders desegregation of the faculty. The school board comes rushing in and says, "Look, we can't [53] desegregate the faculty by reassigning these teachers. They have these rights under state law," and now I am addressing myself precisely to your point, those state laws were not passed to discriminate. They were not passed to prevent desegregation of faculties, they were passed with valid and benign state interest in mind, so you can't monkey with them. And the Court said in that case, and in a whole slew of cases like it involving similar situations, that does not matter, state policy, benign, non-discriminatory state policy must give way when giving way is necessary to vindicate federal constitutional rights. The courts have said that again and again and again.

The state law that you set aside on April 10th of this year was not passed—there was no evidence that that law was passed to discriminate against blacks.

THE COURT: But there was some evidence that it was used to bring about segregation. I have no knowledge of any laws that have been passed or used to bring about segregation or prevent integration.

MR. POLIKOFF: There was no evidence that the law was used in a racial, subjective motivation, discriminatory sense.

[54] The COURT: Do you mean the City Council didn't use it in that sense?

MR. POLIKOFF: We introduced no evidence and neither did anybody else introduce any evidence—in fact, I made a point, Your Honor, in the argument, we were not accusing the City Council—

THE COURT: Way back at the inception, prior to my first opinion, there was such evidence from the mouths of CHA employees, which was cited in the opinion.

MR. POLIKOFF: The evidence was, and I think what you are referring to was, the evidence was that when CHA tried to go into white neighborhoods they were prevented from doing so because the City Council wouldn't approve sites in white neighborhoods. There was no evidence that the reason the City Council was doing this was that the City Council didn't like blacks. It might just as well have been that they didn't do it because they thought it might affect property values, or for any other benign reason.

THE COURT: What are we talking about, black, or low income housing or both? I think we ought to try and—

MR. POLIKOFF: We are talking about access by [55] blacks to low income housing.

THE COURT: All right, that is your definition.

MR. POLIKOFF: At least that is my understanding.

THE COURT: All right.

MR. POLIKOFF: I will be happy to discuss that further.

And I think that the issue that we are now talking about, which is central, Your Honor, is that in your decision in 1969 you made no finding about the subjective motivation of the City Council. You did make a finding that the effect of what the City Council was doing was to prevent low income housing from being built in white neighborhoods, and those are two very different things.

We had nobody on the stand, including CHA people, testifying about what was going through an alderman's mind, why he was casting his vote. We did have—

THE COURT: There is such a thing as I referred to once before, circumstantial evidence.

MR. POLIKOFF: Okay, all right, and if we are relying on the circumstantial evidence of the effect of what is being done, you will see, Your Honor, that the effect of the two laws we are talking about [56] is to perpetuate the identical racial discriminatory pattern in the urbanized area. Eleven out of twelve of these projects, you will

see from the evidence, are in black neighborhoods, more than 80 per cent black.

You will see that the tenancy of the projects is all black. The pattern is a smaller pattern, we don't have as many housing units, virtually duplicates the pattern you found in the city to justify your order. But the legal principle is what I want to remind Your Honor of, if the legal principle is that you do not have to find, and in these cases for example the tenure case that I referred to, the Courts have not found that laws were passed or used with a subjective racially discriminatory intent. They have found that the effect of the operation of the law has been to prevent the Court from remedying segregation, and for that purpose have set the law aside.

You will find on the basis of the evidence that the effect of the two laws we are talking about has been and will continue to be to prevent the use of the urbanized area to remedy the wrongs done to the Plaintiffs. There is no reason why that urbanized area shouldn't be used for a [57] remedy. HUD defines that as the housing market area. That area is an area which is a part of the State of Illinois. The housing authorities that operate within that area are not agents of the respective cities, as I pointed out, they are agents of the state.

If this is a rational and necessary course for remedy, and that is what we have got to prove, we will have a witness who will tell you that, in his opinion, you can accept the opinion or reject it, but I think you will accept it because I believe it to be your own opinion, you have said as much in your 1969 opinion, this is what is happening to the City of Chicago. Now, if that is happening to the city and if the way to stop that from happening is to use HUD's housing market area, or if that is a rational way to try, and if you can't use the housing marketing area because these two laws stand in the way, then you have the authority to set those laws aside for that purpose without any finding that the laws were passed or are being used for a subjective racially discriminatory purpose. You need only find that they are having the effect of preventing effective relief.

Let me come back and wind up before [58] this succinct opening statement gets unsuccinct.

THE COURT: Well, it has been my fault that it has not been succinct. I didn't let you make it succinct.

MR. POLIKOFF: I guess I have already made the point, but I want to emphasize it before I go on to the summary here, that this proposed order relieves CHA of no obligations in the city. CHA, on the contrary, under the order, has an additional obligation; indeed, its suburban activities only get triggered by allocation of city units. If they get no more units for the city, they don't have to do anything in the suburbs. If they get some more units for the city and are obligated to go forward with those, then they have to try in the suburbs as well. In that sense it strengthens Your Honor's order of 1969, as I pointed out before. They can't use suburban cities to reduce the inner city obligation. It is the reverse. The inner city, when it gets some housing units, obligates CHA to try to simultaneously put units in the suburbs. Indeed, CHA's position—this is why I don't understand why they don't love me the more, as Your Honor said earlier—their position has been from the beginning that to be effective in the city they [59] have got to be able to simultaneously proceed in the suburbs. This proposed order—

THE COURT: And they have had an opportunity to do so for some three and a half years.

MR. POLIKOFF: But these laws frustrated them. That is why we—

THE COURT: Let's get specific in regard to what laws you are talking about.

MR. POLIKOFF: Two laws, two laws; one law says that they can't go out into the county without the agreement of the county housing authorities out there. They can go out with the agreement but not without. The law I am referring to is Section 27(c) of Chapter 67½, Smith Hurd Annotated. The setting aside of that law would let CHA go out without the agreement of the housing authority. That is the first law.

The second law—

THE COURT: In view of their industry for the last three and a half years, you think I should put all my faith in the efforts of CHA? That would give them an

opportunity to build less in Chicago than they are obligated to already.

MR. POLIKOFF: It would not give them an opportunity, though, that is the very point, Your Honor. It does not relieve them of any inner city [60] obligations. They could put as many units out in the suburbs as they want under this proposed order and it wouldn't relieve them of an obligation with respect to a single unit in the city.

THE COURT: Well, they have been under a three and a half year obligation that they haven't performed in regard to.

MR. POLIKOFF: Well, they are continuing to be under that obligation.

THE COURT: I understand, but meanwhile the suburbs will blossom and they are just under an obligation.

MR. POLIKOFF: That can't happen. The suburbs can't blossom with public housing under this proposed order, because as I have said, the order—let me put it to you this way: You have got two roads, one leading to housing in the City and the other leading to housing in the suburbs. You can't move on the road that leads to housing in the suburbs until pro tanto you move on housing in the city. If they take two steps toward housing in the city, they are then permitted and obligated to take one step in the suburbs. If they never get to take that first step in the city, if the housing—if after the fifth—let me put it [61] this way in arithmetic: They have now got an obligation to go forward with 1,500 units in the city. Our proposal is that they be obligated therefor to proceed with 750, and that is all we are talking about 750 in the suburbs.

THE COURT: That is an escape hatch right there.

MR. POLIKOFF: Why?

THE COURT: Well, the 1,500 that they were supposed to go ahead with in the city, they already had 1,500 in the bank that we let them build, and this has just offset the 1,500 that they have in the bank. There was 1,500 out on the south side there—

MR. POLIKOFF: Right.

THE COURT: —that the CHA said, "Should we start building these 1,500?" And we said, "No, if you want to go ahead and build them, here is another 1,500 that we

draw against the 1,500 that you have got in the bank. Now you are expanding it to another 750 against the 1,500 that they haven't even succeeded in matching.

MR. POLIKOFF: Your Honor has a misconception.

THE COURT: I do?

MR. POLIKOFF: I am sorry to say that, but facts are facts.

[62] THE COURT: Maybe I do. I can't remember when this case was not on my call.

MR. POLIKOFF: Okay.

THE COURT: And I can't remember when I started entering orders. I can't remember the number of hearings that we have had and what was said at all of them, and I have had other cases on my call in the last six years since this lawsuit was filed.

MR. POLIKOFF: Well, Your Honor has been most patient for a long and frustrating time, and I recognize that, and I hope you understand that it is no pleasure for me particularly to come before Your Honor and say that we need more. I wish we didn't need more also, but I am calling them as I see them and I make—

[63] THE COURT: There is no question about your sincerity, Mr. Polikoff. That will never be questioned by me.

MR. POLIKOFF: I can give you no assurance that what we are talking about is going to work, just as you could give me no assurance that the orders you previously entered would work.

THE COURT: Didn't I give you some assurance?

MR. POLIKOFF: The reverse. You said you thought they wouldn't work.

THE COURT: This means there will not be any more public housing in Chicago, and there hasn't been. That is pretty good assurance.

MR. POLIKOFF: Right. That is a reverse assurance.

THE COURT: That is right.

MR. POLIKOFF: Let me also add to that, Your Honor—

THE COURT: My crystal ball is working better than yours.

MR. POLIKOFF: Let me add that if the sole effect has been to prevent—

THE COURT: As I predicted it would.

MR. POLIKOFF: As you predicted it would.

—A continuation of the pattern of [64] building public housing in Chicago in the black ghetto areas of the city, but that we couldn't get any housing built anywhere else, that, as a matter of judgment, your guess is as good as mine and so on, my personal judgment at least is that a continuation of that past policy was a negative and that if the order only has the effect of stopping a continuation of that past policy, that is a positive effect. It prevents a worsening of the situation.

THE COURT: And it did stop that.

MR. POLIKOFF: And it did.

Let me go back to what I think is a misconception. First of all, those 1,500 units in the bank were matched by 700, not the full 1,500. You said the first 700 had to go in white neighborhoods and that would take account of the 1,500. You gave them the other 750 units. Secondly, those 700 units are part of the 1,500 we are talking about, and they are now working on those 1,500. The lead time is great, but they have submitted proposals to HUD now and if the Court of Appeals affirms your order, they will start coming out of the pipeline. Miss Kula said the first units might well be occupied next May. I don't know how long it is going to take to get those 1,500, but they are started.

* * * *

[74] MR. POLIKOFF: * * * That is what we are talking about, "where necessary to vindicate federal constitutional rights," which is what we are asking you to vindicate by providing a necessary element for full relief, they may readily be bridged, namely, the political subdivisions. They are not sovereign entities.

I want to finally note how and why I think those principles apply in this case—six quick, quick reasons and then I will be done:

First, it applies because as I have already said I think the evidence will show that it is necessary that the relief you have ordered in the city needs the suburban element to make it effective.

Second, the area we are talking about [75] is a unity, an entity. It isn't something some urban planner dreamed up. It is something the United States Bureau of Census calls the housing entity, something HUD calls the housing market area. We aren't asking you to do any—

THE COURT: Does that make it sacrosanct?

MR. POLIKOFF: No, but it shows—it does not make it sacrosanct, but it shows that what we are asking you to deal with is something that the agencies who deal with housing view as an entity, not something Al Polikoff dreamed up.

THE COURT: No, I mean the Census Bureau, as I understand it, is supposed to count the people. I didn't know they had anything to do with creating areas.

MR. POLIKOFF: They do, Your Honor. In their census books they make judgments as to what are unified wholes from many points of view, transportation, jobs, et cetera, et cetera.

And HUD, more importantly than the Census Bureau, makes a judgment as to what is a unified whole for housing purposes.

Okay, we are talking about what those two governmental entities have said is a reasonable geographic area.

[76] Third, I have already mentioned that you are going to see that the racial segregation pattern in the city is duplicated in this area that we are talking about. That makes it appropriate to exercise the power you have in this case to bridge the boundary lines.

THE COURT: Not because of anything the suburbs have done up to this point.

MR. POLIKOFF: Because of the very same kind of facts that you were shown with respect to the City of Chicago, not racial motivation facts. We didn't prove that or try to prove it with respect to the City of Chicago, merely that the effect of the operation of this veto power that the suburbs are given has produced a certain result, namely, a segregated result.

When you found, Your Honor, that 99½ per cent, or whatever it was, of the housing projects in the city were located in black areas, you didn't find that was so because Alderman A was a racist and had cast his vote in

a particular way. What you did find was that the operation of that aldermanic system produced a certain result. You may then have speculated that the reason—you didn't explicitly say this in your opinion—you [77] may have speculated that the alderman was a racist. We didn't argue that. There might well have been other reasons why—you know, there is a lot of talk these days about class as distinguished from race, and people say that they don't mind, it is the poor people they don't want. Maybe that is what the aldermen had in mind. All I know is that the law is that when a specific defect is proven, and it is a racially discriminatory effect, that is enough, and that we will show in the suburbs as well as in the city.

The fourth of my six quick reasons—we are not talking about, as I already said, about something not contemplated by state law. It is contemplated by voluntary action. We only want to make it mandatory for purposes of relief, federal constitutional relief in this case.

Fifth, the evidence is going to say, Your Honor, that HUD has helped to create this pattern of the black city and the white suburb. It is appropriate therefore with respect to HUD that this order be entered and—

THE COURT: I will be interested in what your proof is in regard to that.

MR. POLIKOFF: Okay.

[78] And finally, Your Honor, the evidence will show that the jobs are moving out to the suburbs and that is another factor that you as a court of equity can and should take into account with respect to where the housing is to be provided for the Plaintiff class. Whatever may have been true back in 1969, you didn't have any evidence about jobs. If we had shown you then that for a reason like this, where the jobs are, or it doesn't make sense to locate the housing here anymore, Judge, you have got to locate it here, you would have listened to us. When we showed you that it didn't make sense to go above the third story, you included that provision in your remedial order. Equity, when it is going to grant a remedy, is going to grant a full and complete remedy. It is going to look at all of the relevant factors. It is not going to put blinders on. And just as the high-rise, which was

not an element of the case, we didn't offer any evidence about high-rises, so the jobs here are a factor that you can take into account.

Well, I have about finished. I thank you both for your interruptions and for your indulgence. I have said four things, I have said [79] first that the issue before you is whether an additional order is necessary to provide the Plaintiff class with full and effective relief, and if so whether it should be our kind of specific order or HUD's best effort order.

Secondly, I have said that I think the evidence is going to show that a further order of our sort is necessary and appropriate. It is necessary because not only do we need to expand the total quantity of relief, but more importantly, we have got to preserve the effectiveness of what happens in the city, always remembering that it is for the Plaintiff class we are talking about.

Third, I have said that I think under the law Your Honor has a duty to consider these things, to use all available alternatives and possibilities to effect the greatest possible degree of desegration. And, fourth, I think that if Your Honor is persuaded by the evidence of the necessity of doing so, it is clear that you have the power to cross the political boundary lines, which are not sovereignties.

Thank you, Your Honor.

THE COURT: We will take a five minute recess before we hear any evidence.

• • • •

[81] PHILIP M. HAUSER,

called as a witness or behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POLIKOFF:

Q Will you state your name, please?

A Philip M. Hauser.

MR. POLIKOFF: Your Honor, in view of the fact that we have just agreed that the September 28th hearing may

be treated as part of the record of this proceeding, Professor Hauser, I am sure you will remember, was qualified at that time and I won't repeat those questions.

THE COURT: All right.

BY MR. POLIKOFF:

Q Professor Hauser, have you computed from census information any population figures for the black and white populations of Chicago and for [82] other cities for decennial censuses since 1900 at my request?

A I have, but if I may defer the answer to your question, with the Court's permission, I should like to correct an error in my previous testimony when I last appeared in this Court as a witness.

You may recall when I was asked by defense counsel whether I was a member of the—what is it?

Q The American Civil Liberties Union?

A The American Civil Liberties Union, and my answer was in the negative. When I recounted my day's experience to my wife that evening she told me that she had at some time in the past sent a membership in in my name so that I was a member without my knowledge. My wife has that authority in my household.

THE COURT: What is new, Professor?

BY THE WITNESS:

A (Continuing) In any case, had I known I had been a member I would not have denied it. I have no reason to. I don't think it is a subversive or dangerous organization.

Now, with respect to your question—

[83] BY MR. POLIKOFF:

Q Yes?

A Yes, I have made such calculations.

Q Would you tell me what cities you have computed that data for and state briefly what the data shows?

A Yes, among others, Washington, D. C., Newark, New Jersey, Detroit, Michigan, and the City of Chicago.

What the data show, focusing only on the central cities, is in 1900 for example—

THE COURT: What is your definition of central city? You mean the city limits?

THE WITNESS: The city limits. And this is the terminology of the Bureau of the Census as reported in the statitics.

THE COURT: We do have another definition of central city which is where the housing currently is being proscribed.

THE WITNESS: Yes, inner city.

BY THE WITNESS:

A (Continuing) But this is the city used by the Bureau of the Census in their statistics for Standard metropolitan statistical areas and they [84] divide the metropolitan area in the central city and the ring. In some metropolitan areas—

Q That is the ring, r-i-n-g?

A R-i-n-g, the remainder of the metropolitan area.

And I might say in some metropolitan areas, what they call the central city is more than one city, it is the nucleaus for the metropolitan area.

Q Is that true for Chicago or not?

A Chicago is the only central city.

In the case of Washington, D. C., that area had a population 31 per cent Negro—

MR. MURRAY: Your Honor, for the record, we will object to the relevancy and the materiality of this line of questioning, and if we may have that as a standing objection during this whole line of questioning?

THE COURT: All right, and you are reserving your right to strike if it turns out that it is not relevant. I can't rule on it at this time until I hear the answer.

MR. MURRAY: Exactly, Your Honor.

THE COURT: You are reserving your right [85] to strike if it turns out not to be relevant.

BY THE WITNESS:

A (Continuing) In 1900, Washington, D. C., 31 per cent blacks; it was 35 per cent by 1950, and according

to the return of the nineteenth decennial census, that is as of April 1, 1970, it was 71.1 per cent black.

In the case of Newark, 2.7 per cent black in 1900, 17.1 per cent black in 1950, 54.2 per cent black in 1970.

In the case of Detroit, 1.4 per cent black in 1900, 16.2 per cent black in 1950, 43.7 per cen black in 1970.

Chicago was 1.8 per cent black in 1900, 13.6 per cent black in 1950, 32.7 per cent black in 1970.

And I have the data here for the intermediate years.

BY MR. POLIKOFF:

Q Professor, have you extrapolated those percentages for Chicago for the 27 odd years remaining in this century?

A I have.

Q Could you give those figures to me and [86] tell me the basis for your extrapolation?

A Well, if one assumes that the changes in black and white population respectively during the intercennial decade of the '60's were to continue—

Q That means from 1960 to 1970.

A 1970. If this were to continue to be the case, those same changes, then by 1980 Chicago would be 45 per cent black, by 1990, 58 per cent black, and by the end of the century, and that is just about one human generation away, 70 per cent black. Actually if we look at some critical breaking points with present trends, unless they are interrupted, Chicago would be over 50 per cent black by 1984, and interestingly enough, Your Honor, this jibes with the Kerner Commission Report which was calculated, the figure was calculated before the 1970 census results were available, but it comes out precisely the same year. Chicago, with present trends if not interrupted, would be over two-thirds—it would be two-thirds black by 1997 and 75 per cent black by 2005.

Q Now, Professor, can you say anything about the relationship between these general population figures you have just been giving and the projections [87] and figures as to school populations?

A Well, these figures relate, of course, to the total population. If one were to look at school enrollment figures, then it turns out that the proportion of black for the school population is much greater than the proportion of black of the total population for two reasons; one is that the black population is a much younger population than the white population by reason of a higher birth rate, and the second is that white students have found escape hatches, of course, in the private and parochial schools.

Now, only yesterday the Chicago Board of Education reported its census results which indicates, for example, that at the present time over 56 per cent of the public school population is black, although only a third of the total population is black.

Q Professor, have you made any computation at my request respecting census tracts in the city rather than population trends and projections?

A Yes, I have.

Q Would you tell me what that is?

A Well, if one looks at the proportion of [88] census tracts in the City of Chicago which had 30 per cent or more black, then these are the numbers that result and that come out in a projection; as of 1960, 23.1 per cent of all the sum, over 900 census tracts in the City of Chicago, had 30 per cent or more black population.

THE COURT: That is what per cent?

THE WITNESS: 23.1 per cent in 1960.

BY THE WITNESS:

A (Continuing) In 1970, 34 per cent of the census tracts of Chicago had 30 per cent or more blacks, and I might say—

Q And—go ahead.

A I might say I have used the census tracts in this way because it would be an approximation of the land area which is black, actually an understatement, because the way the census tracts are designated or designed by the census bureau, they are based on density population, and since the inner city populations are much more dense, they tend to have lesser land area than the average tract.

Now, the projections indicate that by the year 1990, with present trends, it is [89] possible that 74 per cent

of the census tracts in Chicago would have 30 per cent or more blacks, and by well before 2000 every census tract in the City of Chicago would have at least 30 per cent blacks.

Q And in making these computations you have taken no account of the so-called buffer zone in the existing order, is that correct?

A That is quite correct. This refers to the entire city.

Q Turning back to the population figures for the City of Chicago, Professor Hauser, what changes in the white and in the black population of the city took place in the ten years 1960 to 1970?

A Well, between 1960 and 1970 the population of the city declined by 183,447 persons, according to the census returns. Now, that decline of over 183,000 persons was made up of a decrease of 504,981 white persons, offset by an increase of 321,534 black persons, and these figures do not tell the total story because the decrease of over half a million white people in the ten years between 1960 and 1970 was compounded of an out migration of whites, more than half a million, offset in part [90] by the natural increases of whites, that is the excess of births over deaths; so that it is clear that well over a half a million people left the City of Chicago during the decade.

Q Can you say anything, Professor, about the composition of the black and white population of Chicago with respect to the prevalence of poverty?

A Yes, the census results have information about those in poverty.

Q Tell us how you define poverty for this purpose?

A Well, poverty is defined on a rather complex sliding scale. In general, a family is held to be poor—and this is by definition of federal agencies—if a family of four has an income of less than approximately $3,200. Now, that income goes up and down, the level, with the size of the family. According to that federal definition, 20.7 per cent of all Negro families in Chicago as of 1970 were in poverty, whereas the percentage for whites was less than ten per cent. There is a ratio of twice as large a proportion of black families are in poverty in Chicago as the [91] white families.

Q Professor, talking about the racial residential pattern in the City of Chicago, do you have an opinion now as to what these figures you have been giving us mean with respect to Chicago, for, let us say, the remaining 27 years of this century?

A Well, I think the conclusion is inevitable. We already have, to a considerable extent, an apartheid society in which blacks and whites in the City of Chicago are separated in space and unequal.

With present trends, unless there is intervention or interruption, it is clear that from now on we will become increasingly and more so an apartheid society with both physical separation between blacks and white and the inequalities that are prevalent and exist in part by reason of the separation.

Q Professor, if low income housing, particularly low income housing was available to Chicago residents, including black Chicago residents, were made available in the urbanized area surrounding Chicago on a scattered basis, scattered site basis, what would, in your opinion, the effect of such [92] housing be on the pattern of population movements, particularly white population movements you have testified to?

A Well, in my judgment, anything that in effect subjected the surrounding areas, the suburban areas in the Chicago region, to precisely the same types of requirements that exist within the City of Chicago, or to put it more succinctly, anything that would change the suburb from being escape hatches would automatically tend, in my judgment, to diminish the rate at which there is a white exodus from the city while simultaneously providing some options for blacks to live either within the city or within the suburban area.

In addition, I think there would be what might be thought of as either a leverage effect or a multiplier effect; if it became clear to the white person in the City of Chicago that anywhere he moved within the urbanized area or within what HUD defines as the housing market area, which is the standard metropolitan statistical area as defined by the Bureau of the Budget and Management, the same area, six county area, that if it became clear

that public housing for the poor, including [93] blacks, were to be placed in any part of the urbanized area, then I think the perception of the white population would be such as to produce the effect of saying there were no escape hatches and there is no place to flee. I think this would be the effect.

Now, this is not to say that this would be the effect of only what is being proposed here, but this, what is being proposed, is a step in that direction.

Q And have you read the order that is being proposed in this case by the Plaintiffs?

A Yes, I have.

Q Can you say anything specifically about whether in your opinion that order does or does not rationally conduce to the objectives that you have just stated?

A Well, in my judgment it very definitely does and it does so out of several, I think, very important considerations.

Q What are they?

A Namely, that for one thing, by concentrating on the urbanized area of Chicago, which has definitely delineated boundaries by the Bureau of the Census, you would be in effect focusing on the [94] area outside the City of Chicago into which the predominant overwhelming proportion of whites do move when they leave the City of Chicago. In that sense it is a realistic area.

Secondly, the principles you have embodied in the proposed order involved scatteration, a distribution of proposed housing sites throughout the urbanized area so as to minimize a repetition of the segregation which has occurred and still characterizes the City of Chicago.

And, third, the provisions in the order, which perhaps might be called a mini-ghetto provision, and which provide units to prevent concentration of units in black suburban areas also assures the inability of large ghetto areas to form within the suburban communities.

In other words, it seems to me that your order—

THE COURT: You are aware that there are some ghetto areas in the suburbs?

THE WITNESS: Oh, very definitely. In fact, most of the black population which lives in suburban Chicago

is already heavily concentrated in ghettoized communities, but [95] the effect of this order unquestionably would be to prevent the formation of ghettos and to assure dispersion to the extent that this order can operate in that direction.

BY MR. POLIKOFF:

Q You have made computations, as your testimony indicates, from the census data; in making those computations, did you prepare notes and have you brought those notes with you here today?

A Yes, I have, and I might point out apropos of this question, too, that remember that in 1970, and although a third of the population of the city was black, that was true of only about 17 per cent of the metropolitan area.

Q You have your notes with you here today?

A I do.

MR. POLIKOFF: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. MURRAY:

Q Professor, do you recall your testimony that you gave on September 28th?

A Well, I think so. I don't know in what detail.

[96] Q Let me refresh you then.

Do you recall making the statement, "Chicago is the most segregated of any of the large northern cities of the United States"?

A I do.

Q Do you know if that type of statement, with respect to your expertise, is considered good form, shall we say?

A Well, there it is a question of what is considered good form. The point is that by utilizing a given segregation index and one which we—

Q Yes or no?

THE COURT: I dont' know that you can limit it to a yes or no.

BY THE WITNESS:

A Well, I would answer yes and no.

BY MR. MURRAY:

Q All right.

THE COURT: Will that create utter chaos out of mere confusion?

BY MR. MURRAY:

Q Well, then, do you agree with the statement, and you did provide this book for my examination, "Negroes in Cities, Residential Segregation, [97] Neighborhood Change by Charles E. Taeuber and Alan F. Taeuber"—is that how you pronounce the name?

A The first name is Karl.

Q Karl?

A And the pronunciation is Taeuber.

Q And you did provide that for my examination, is that correct?

THE REPORTER: Would you spell that name, please?

THE WITNESS: Pardon me, I am asked to spell the name. T-a-e-u-b-e-r, and Karl with a capital K.

BY MR. MURRAY:

Q Do you recall that?

A Yes, yes.

Q And do you agree with the statement appearing on Page 36 of that book, "It is possible"—I think it is in the middle of the paragraph—"It is possible to search through the index values for individual cities," and it refers to table 1"—for evidence to add to the propaganda game sometimes played by civil rights advocates that 'City X is the most segregated in the country' although the 207 cities can be ranked from low to high on the [98] particular scale. I think we wish to discourage such usage."

Do you agree with that statement?

A Yes and no. And let me indicate the qualifications; these people who are the authors of this book, by the way, happen to be my students and I am not always successful in teaching them the things they should know.

Q Then you disagree with that statement?

A No, because I think that if one were to explicitly attempt to rank these cities with say one or two per-

centage point differences on this particular index and other segregation indexes can be used, that one can push it too far, and I agree with the statement to the extent that I would say some propagandists have pushed these things to a point where they have no statistical significance.

When I talk about a difference of a segregation index of over 90 for Chicago and 78 for New York City, this is a difference which has, I think, a very real meaning, and to that extent therefore, if you want to interpret it that way, I would be disagreeing with the statement.

In other words, what I am saying is [99] the old dictum of Aristotle still holds, "Accuracy is always relative to the use thereof." And the fact that others misuse it does not necessarily undermine my use of it in my testimony.

Q Well, could you just explain, just to keep everybody—what is the basic theory from a demographic point of view of the segregation index? What is the theory it is premised on?

A Well, there isn't very much theory. It is an operational device. What the segregation index employed here means is simply this, if you ask the question what proportion of any population, let's be specific, what proportion of the black population in the City of Chicago would have to be moved if they were to approximate or equal the distribution of the white population by whatever area units you use, city blocks or census tracts or community areas, then an index of 91 per cent means that it would be necessary for 91 per cent of the blacks to be moved to achieve the same distribution as that which the whites have. This presumably would be complete desegregation.

Q And which would have a value of zero on the segregation index, is that correct?

[100] A That is right.

Q With respect to the segregation index which you indicated was 90 per cent, more than 90 per cent, do you have a precise figure on that? I believe that you have it in your notes there.

A Yes, I had it calculated for 1970 on the basis of census tracts for which the data were available to me at the time.

I might say that it is not directly comparable to the indexes which are in the Taeuber book which were based on city blocks, information which was not then available. And I have got it—I will have to look for this piece of paper.

May I say that by doing it on census tracts instead of city blocks I have tended to understate the index. It would rise if the area is smaller. The smaller the area the greater is possible the dispersion and the higher would the index become, but for 1970 my calculations gave a white versus Negro segregation index of 91.

Q And did you compute the segregation index for the City of New York or did you take that from the Taeuber book?

A This is taken from the Taeuber book. [101] I have not computed it for 1970.

Q For 1970, is that correct?

A Yes, but the—

Q And that figure is based upon the available 1960 census data, is that correct?

A That is correct.

Q And as far as the Taeuber book—and I would like you to turn to Page 32 and 33 of that book which has the tables, I believe, that you took that figure from New York, New York.

A Yes.

Q Do you have that there, Professor?

A New York City, yes.

Q All right, is it not a fact that the segregation index for Cleveland, Ohio is 91.3?

A Cleveland, Ohio? Yes.

Q Is it not a fact that the segregation index for St. Louis, Missouri, is 90.5?

A St. Louis, yes, 90.5.

Q Is it not a fact that the segregation index for Wichita, Kansas is 91.8?

A Yes.

Q And is it not a fact that the segregation index for Warren, Ohio, is 90.4?

[102] A Warren, Ohio? Yes, 90.4.

Q And Joliet, Illinois, is not the segregation index 90.2?

A You are straining my acquaintance with the alphabet.

Yes, 90.2.

THE COURT: Joliet, is that in the suburban metropolitan area that we are talking about?

MR. MURRAY: That is in the standard metropolitan statistical area, Your Honor. That is in Will County.

THE COURT: And we are talking about the metropolitan area into which they seek to spread.

MR. MURRAY: No, it is not. It is in Will County.

THE WITNESS: It is in Will County.

BY MR. MURRAY:

Q Professor, how many blacks presently live in the City of Chicago?

A Well, I can't answer that question precisely, but I can tell you what the census reported in 1970.

[103] Q That is all I am asking you.

A Yes, okay, and the answer to that question is 1,102,620 plus, if I—I am afraid I must say at least ten per cent who were undercounted, at least ten per cent.

Q Well, approximately what number or percentage of blacks would be eligible for public housing, using your previous testimony as to what you define as a poverty level income?

A Well, I can't—

MR. POLIKOFF: Just a moment. Without objecting to the question, I want to make it clear to Your Honor that the poverty level and the eligibility for public housing level are not the same. As Mr. Murray knows, the eligibility for public housing is at a higher income level than the poverty level, so that the response to this question does not, as would otherwise appear, give the number of eligibles for public housing. It would be larger than the responsive answer would indicate.

THE COURT: All right.

[104] BY THE WITNESS:

A The answer is—there is an answer to your question, but it would involve consulting a census volume on the one hand and the CHA requirements on the other, and I don't have that information before me.

BY MR. MURRAY:

Q Mr. Polikoff did not request you to prepare some compilations on that?

A No, he had not.

Q You heard Mr. Polikoff's opening statement, did you not?

A I did.

Q And you heard Mr. Polikoff's remarks referring in his opening statement to the spreading black tide; do you know what he was referring to?

A Oh, I think he was using somewhat poetic language which startled me a little bit. I don't often hear it in the courtroom. The fact that the black population was increasing and actually acquiring larger and larger proportions of the space in the City of Chicago, which is of course true.

Q And you have already testified that you [105] are familiar with the Plaintiffs' proposed low income housing distribution plan, is that correct?

A Yes, I have read the proposed order.

Q Did you assist in this preparation?

A Indirectly. I was asked to—my judgment about cutting points, this, that and the other, so I guess the answer is yes, so I had a very minor role in it.

Q When were you consulted?

A Oh, I just came back from Asia about two weeks ago and it must have been before I left for Asia, and I would judge that as probably two months or three months ago.

Q All right, thank you.

Now I am going to ask you to assume several factors that you have previously testified to and then ask your opinion as an urban expert for the following: Assuming Plaintiffs' proposed judgment order is entered, assuming that CHA finds suburban sites for low income housing, assume that the statutory constraints to the location of

such housing are either overriden by Court order or the communities voluntarily accept said housing units, assume further that the Chicago area office of HUD [106] provides funding approval for the 20,000 units of public housing to carry out Plaintiffs' plan each year for the remainder of this century, would this halt or materially abate the spreading of the black tide?

A Well, to begin with you have got a lot of assumptions there, but—

Q I just asked you to assume that those assumptions were correct.

A Sure. And the answer would be that this order alone, in my judgment, could not begin to do that. It would constitute one step in the direction that, in my judgment, would be desirable public policy, assuming that it is the policy of the United States not to, shall I say, support the apartheid society and to make some effort to provide people with equal opportunity despite racial or income differences.

Q So your answer would be no?

A My answer is not no. It is the first step. It is a step in that direction. By itself it certainly cannot.

Q Would your answer be different if HUD were able to fund, let's say, 50,000 dwelling units [107] a year under this proposed judgment order, assuming the funds were available?

A My answer is probably not, although with that larger appropriation there is no doubt in my mind that a good part of the relief to which this suit is addressing itself would be effected, that is, there would be much more relief in the sense that the Plaintiff class would have options for housing other than in the ghetto of the City of Chicago, and the more housing units there are in accordance with this proposed order, the more likely is that to be the case.

Q Are you familiar with this—let the record reflect I am holding up a United States Department of Commerce publication No. HC(3)-68 United States Department of Commerce Bureau of the Census entitled "Black Statistics, Chicago, Illinois, Northwestern Indiana Urbanized Area 19th Census of Housing".

Are you familiar with this volume?

A I have seen it. I am not very familiar with it. I have been spending a lot of time in Asia.

MR. MURRAY: I would like to have this [108] marked as HUD's Exhibit B for identification as of this date.

(Said exhibit marked HUD Exhibit No. B for identification as of November 27, 1972.)

BY MR. MURRAY:

Q Mr. Hauser, I show you HUD Exhibit B for identification and I ask you to turn to the page in the volume that I provide you there and ask you, is that a Xerox copy of that particular table?

A Oh, I have seen this table before and I am sure it is a Xerox copy.

Q All right, I just wanted to make sure you can authenticate that.

A Yes.

Q And in your opinion this order is a fair share order, is that correct?

A No, it is not. I don't think it is a fair share order at all.

THE COURT: Which order now are we talking about?

MR. MURRAY: The proposed judgment order. When I refer to the preferred order I am referring to the proposed judgment order.

[109] THE COURT: I just want to be sure.

BY THE WITNESS:

A Not at all. It seems to me on the contrary, this represents a kind of an abandonment at least pro tem of the fair share principle. It is simply an order designed to take an initial step to provide scatterage, to prevent ghettoization and to increase the options of black communities for residents in other than the inner city ghettos of the City of Chicago and to provide the relief which occasioned this case in the first instance.

Q So in your opinion this is not a fair share order, is that correct?

A Not at all.

A fair share order, in my judgment, would go far beyond anything that is proposed in this order.

Q And is it not a fact, referring to HUD's Exhibit B for identification, that that lists all the places where you have a population of 2,500 inhabitants or more in the Chicago urbanized area? Is that correct?

A Yes, yes, I am sorry I did not realize that that was a question.

[110] Q And that is approximately about 160, I believe, 170 communities, is that correct, excluding the unincorporated areas?

A Yes, approximately.

Q And the data contained in there deals with total population and the housing units that are located in those particular areas.

A Yes. I am familiar with this.

I might add, incidentally, when you asked about familiarity, I was chairman of the advisory committee that planned this census, so I have some general familiarity with all aspects of it.

Q All right.

So with respect to dispersal—the order calls for 700—I believe 750 units of housing is that correct?

A Yes, in the urbanized area, right.

Q And that would average out, if we were to disperse it on a quota "fair share" basis for two units per suburban municipality, is that not correct?

MR. POLIKOFF: Your Honor, if I may, this phrase "fair share" that is being used by Mr. [111] Murray pretty regularly now, it is—

THE COURT: You have used it on prior occasions and in your briefs.

MR. POLIFOFF: We have not used it in this hearing and we have not deliberately used it because as indicated ours is not a fair share plan. All I am suggesting now is that the testimony is going to be—

THE COURT: I think that is firmly established, uncontradicted and undenied at this time.

MR. POLIKOFF: Right, but I want to know what Mr. Murray means when he uses the words "fair share" directing the questions to Mr. Hauser so that the record will be clear as to what he is talking about when he answers.

THE COURT: When you use "fair share", Mr. Murray, do you mean fair share as has heretofore been used in this Court room?

MR. MURRAY: Yes, Your Honor, that is what I was always under the assumption that that is what the Plaintiffs have consistently talked about.

[112] THE COURT: I know it is not a term that is strange to my ears.

BY MR. MURRAY:

Q Is it not correct, Professor, that the dispersal of those 750 units would come out to about two units per suburban area? Is that correct?

A This arithmetic is approximately correct.

Q Professor, you said that this order, in your opinion, is not a fair share order, and yet you based, as I understand your testimony, as the reasons why, in your opinion, this is a good order, that it would close up all the escape hatches, is that not correct? Is that not part of your opinion?

A No, what you have stated is not correct. It is not what I have stated.

What I have stated is that it would not close up all escape hatches, but I said anything operating in that direction would tend to have the effects to which I referred.

Now, it is patently absurd to talk about 750 units closing up all escape hatches.

Q I agree.

A But you have got to begin somewhere. The [113] point is that you have got to begin somewhere.

Q I agree.

Well, then, if this is not a fair share order, in your opinion, what kind of numbers of dwelling units for low income families would you envision in order to achieve, in your opinion, full relief for the Plaintiffs in this lawsuit?

A Well, in my opinion, in the longer run, I would hope that a fair share principle would be applied. The fair share principle—

Q One second, Professor.

MR. MURRAY: Would you please read my question to Professor Hauser? I think he misunderstood my question. Would you please read the question, Mr. Court Reporter?

(Question was read.)

BY THE WITNESS:

A Well, I can't give you a number out of my head, but I could calculate one.

Q Approximately.

A Well, put it this way, there are approximately 17 per cent of blacks in the metropolitan area of Chicago, the six county area; under a fair share order, and assuming complete voluntary, and [114] I think I stress voluntary efforts at integration, this would mean that something like 17 per cent of the population of all communities in the metropolitan area would be black. You can translate that into households and dwelling units if you wish, but you are restricting it to the poor.

Q Do you have a figure in mind, Professor, at all? Do you have any opinion?

A Well, if you want 17 per cent of a population of seven million, it would tell you how many people are involved, or if you want—and let me read the number of blacks that there are in the City of Chicago, or in the metropolitan area.

Q Could you do it quickly? I hate to ask you this. Can you give me a quick calculation as to just an approximate figure as to how many number of dwelling units for low income families, in your opinion, would envision in an order to achieve full relief? I have a pencil and a paper and I don't mean to—I would like to have that answer.

A In the City of Chicago, as I have already said, 20 per cent of the black families are poor. Now, let me work with that poor figure because I can tie it to that. This

is not the same as those [115] eligible for public housing, as you are aware. There is a numerical answer to your question and I don't have the data necessary to calculate it, but I can give you an approximation based on the poor. This means that there are 50,548 Negro families in Chicago as of April 1, 1970 living in poverty.

Now, of those families the total number in CHA is approximately what? I think one of the CHA people can tell me that better than I can dig a number out of my head. Subtract that and that tells you how many more would have to be done to house the poor.

What is the number of families in CHA projects now?

MISS KULA [CHA Attorney]: We have 40,000 units of public housing, but that includes some—that includes the elderly, so I think it is 35,000.

BY THE WITNESS:

A (Continuing) 35,000 units of public housing of which something like ninety some per cent are black, is that right?

MISS KULA: Yes, 95 per cent.

[116] BY THE WITNESS:

A (Continuing)—95 per cent are black, let's assume all 35,000 units. You have at this time some 51,000 black families who are poor, so there is a 15,000 gap between that number plus, of course, the additional who are eligible for public housing under their income regulations, which involves many more people than those who are just defined as poor in the census reports.

Now, that is as close as I can come at the moment.

BY MR. MURRAY:

Q Can you give me any sort of number? All I want is a number.

A Oh, yes, but this is an unreasonable request.

Q Okay.

A That is, I do know numbers pretty well—

THE COURT: Mr. Murray, how much longer are you going to be? I have got a jury with a verdict.

I mean, do you want some more time tomorrow morning or what? I am trying to get the Professor out today if I can.

[117] THE WITNESS: I have to teach tomorrow morning.

MR. MURRAY: I am finished, Your Honor.

THE COURT: Do you have something, Mr. O'Brien?

MR. O'BRIEN: Judge, I have a surprise. No questions.

THE COURT: Anything, Mr.—

MR. POLIKOFF: Just one question.

REDIRECT EXAMINATION

BY MR. POLIKOFF:

Q Mr. Murray's examination of you suggested that there was, I believe, one city that had a higher index as computed by the Taeuber book than the figure you had given for Chicago; do you have any explanation for that?

A Well, in my earlier testimony I said Chicago was the most segregated large northern city. Many of the cities to which Mr. Murray referred I would not regard as large.

If you take the cities of a million and over, why, the Chicago index is higher than those of any other city of a million or more in the north, so I don't consider that as being in [118] conflict with the testimony I presented.

MR. POLIKOFF: That is all, Your Honor.

THE COURT: I think, Professor, we will let you go and teach tomorrow morning.

THE WITNESS: Thank you, sir.

(Witness excused.)

• • • •

BEST COPY AVAILABLE

PLAINTIFFS' EXHIBIT NO. 11

[Admitted November 28, 1972]

HOUSING AUTHORITIES AND PROJECTS IN THE CHICAGO URBANIZED AREA *

Housing Authority	Date of Incorporation	Project Designation	Project Location	Year Completed	Number of Family Dwelling Units	Racial Composition of Tenants as of 11/15/72			Racial Composition of Census Tract in Which Project is Located (Percent Non-White)	
						White	Black	Other	1960	1970**
COOK COUNTY Housing Authority County of Cook	1946	Ill. 25-1	16th and Arnold (Chicago Heights)	1953	15	—	15	—	70.8	87.6
		Ill. 25-2	11th and Fifth (Chicago Heights)	1953	37	—	37	—	70.8	87.6
		Ill. 25-3	75th and 63rd Pl. (Summit)	1953	35	—	35	—	30.0	33.1
		Ill. 25-4	139th and Grace (Robbins)	1956	100	—	96	—	93.9	94.4
		Ill. 25-5	11th and Wentworth (Chicago Heights)	1962	120	1	117	—	70.8	87.6
		Ill. 25-6	16th and Ellis (East Chicago Hgt's)	1960	100	—	99	1	61.7	79.5
		Ill. 25-7	11th and Berkeley (East Chicago Hgt's)	1963	116	—	110	5	61.7	79.5
		Ill. 25-10	16th and Greenwood (East Chicago Hgt's)	1971	100	—	99	—	—	79.5
		Ill. 25-12	135th and Woodlawn (Robbins)	1972	100	—	100	—	—	94.4
		Ill. 25-16	Various (Leased Housing) (Evanston)	1972	95	16	79	—	—	—

* Projects are all assisted by HUD under the provisions of the United States Housing Act.
** 1960 and 1970 Census Data.

HOUSING AUTHORITIES AND PROJECTS IN THE CHICAGO URBANIZED AREA (cont'd.)

Housing Authority	Date of Incorporation	Project Designation	Project Location	Year Completed	Number of Family Dwelling Units	Racial Composition of Tenants as of 11/15/72			Racial Composition of Census Tract in Which Project is Located (Percent Non-White)	
						White	Black	Other	1960	1970
DUPAGE COUNTY										
Dupage County Housing Authority	1941	No Projects	——	—	—	—	—	—	—	—
LAKE COUNTY										
Lake County Housing Authority	1946	Marion Jones Homes	Various (North Chicago)	1962	125	2	123	—	22.4	83.6
Waukegan Housing Authority	1951	Barwell Manor	Various	1965	120	1	118	1	55.1	26.9*
		Armory Terrace	2701-19 McAree Rd. (Waukegan)	1965	50	32	9	9	2.9	3.7
North Chicago Housing Authority	1969	No Projects	——	—	—	—	—	—	—	—

* The boundaries of this census tract were changed from 1960 to 1970. The 1970 census tract is immediately adjacent to a census tract which is 75% non-white.

NOTE ON ELIGIBILITY

Cook County Housing Authority Regulations state that all applicants, regardless of period of residence, shall be eligible for public housing, but that a preference in the selection of tenants may be granted based on a period of residency in the municipality in which the project is located, if reasonable as to time and if established by the local governing body of the municipality and approved by the Authority. Periods of residency established by the above municipalities for preference purposes are as follows:

1. Chicago Heights—2 years.
2. Robbins—2 years.
3. Summit—1 year.
4. East Chicago Heights—2 years.
5. Evanston—based on priority to applicants with longest period of residency.

Eligibility for Waukegan Housing Authority projects is conditioned upon 2 years residency in the City of Waukegan.

The Lake County Housing Authority provides that a preference in the selection of tenants is to be granted based on a two-year period of residency in the municipality in which the project is located. Eligibility for Lake County projects is conditioned on residency in the County.

PLAINTIFFS' EXHIBIT No. 18

[Admitted November 28, 1972]

CITY OF CHICAGO

OFFICE OF THE MAYOR

[Emblem]

May 12, 1971

Mr. George J. Vavoulis
Regional Administrator of
Department of Housing and
Urban Development
360 North Michigan Avenue
Chicago, Illinois 60601

Dear Mr. Vavoulis:

In accordance with the conferences held by representatives of our offices, this letter of intention is submitted delineating the proposed activities to be undertaken in the City of Chicago to accomplish the objectives of providing increased housing opportunities for all its citizens. Your acceptance of this letter, as well as the acceptance thereof by the Chicago Housing Authority (CHA), reflects the intention of your agencies to provide your full cooperation in the implementation of these programs.

The following is an outline of the proposed action program and a timetable for its accomplishment.

PART I. UNDERTAKINGS BY THE CITY AND THE CHA

The following actions are to be implemented within the times hereinafter set forth.

A.

DEMOLITION

The City will reduce projected demolition of housing units for the current Workable Program period from 12,827 units to 12,327 units and shall submit a report to HUD by June 15, 1971, identifying the sources and numbers of such reductions in demolition activities.

B.

DEVELOPMENT OF SECTION 235 HOUSING SITES

The City of Chicago and other local entities presently have title to approximately 1,000 scattered vacant lots situated within the boundaries of the City which will accommodate the development of single-family or townhouse units under the Section 235 housing program. Working with Model Cities' funds, the City will accomplish the following:

1. Develop programs for land cost write-down, downpayment loans or grants, and homemaking assistance.
2. Establish procedures and formalize agreements, satisfactory to HUD, to assure that not less than 250 of units of said Section 235 housing will be available for purchase of low-income families.
3. A delineation of the location of sites for 500 units of said Section 235 housing, including the 250 units which will be made available for purchase by low-income families, shall be submitted on or before June 15, 1971, to HUD together with a program and construction schedule. Invitations for bids for construction contracts for the 250 units for low-income families shall be announced by June 15, 1971, and contracts shall be executed by September 15, 1971, subject to HUD providing Section 235 allocations.
4. Said housing shall be available in accordance with the 1968 Civil Rights Act and the Open Housing Law of the City of Chicago. It is anticipated that the City and The Chicago Housing Authority will cooperate in this effort by making available to the developers of the units for low-income families, approximately 50-100 sites in census tracts in the City with a nonwhite population not in excess of thirty (30) percent.

C.

LEASING AND RENT CERTIFICATE PROGRAM

A new leasing and rent certificate program will be undertaken with up to one million dollars of Model Cities

money, or other Federal funds, and one million dollars of community improvement bond money to expand the leasing program for housing low-income families. Contracts will be entered into with major private real estate management firms to identify available units throughout the Chicago Metropolitan area and enter into leases for said units for up to 1,200 families. Families if they wish may receive a rent certificate for use with units they identify. Such rent certificates will be issued after a unit has been identified and provision has been made for occupancy thereof. The City's Relocation Division will identify families eligible for this program and make their names available to the Chicago Dwellings Association. The overall responsibility for implementing this program will rest with the Chicago Dwellings Association. The City will make funds available on a 50-50 matching basis, utilizing local money and Model Cities money, or other Federal funds, for this supplementary leasing program for a duration of five years, unless there is a determination of reduced need, concurred in by HUD, that permits a later reduction of the program.

This leasing and rent certificate program will be administered so that 200 rental units for low-income families will be identified (or rent certificates issued) and made available for occupancy by low income families by June 15, 1971; said leasing and rent certificate program to be continued thereafter at a rate of 200 rental units per month until a total of 1,200 such rental units are made available to low-income families.

Site selection for rental units under this program shall take account of accessibility to places of employment of relocatees and shall be conducted in such a way as to ensure equal housing opportunities and a "broad choice of neighborhoods," in accordance with Federal law and policy, to all persons without regard to race, color, religion, or national ancestry.

The City shall provide HUD with monthly reports on units leased and certificates issued including the address of each unit, the percentage of non-white population in the census tract, the rental price of the unit, the subsidy

contracts. By June 15, 1971, specific developments and Section 236 to be made available under rent supplement provided by the City, and confirmation that each such unit has been inspected by the City and found to meet or exceed the applicable local housing code standards, or in the absence thereof, to meet or exceed the housing code standards then in effect for the City.

D.

INCREASED USE OF RENT SUPPLEMENTS

The City and HUD will require developers of Section 236 housing to make available 20 percent of their units under rent supplement contracts. This should provide 600 units within the City of Chicago. HUD should also require units constructed in the metropolitan area under the number of units to be provided will be submitted to HUD.

E.

CHICAGO HOUSING AUTHORITY

1. The Chicago Housing Authority has submitted to the Chicago City Council and the Chicago Plan Commission 275 sites which would provide for construction of approximately 1746 low-income family housing units.

   Community organizations are arranging meetings with representatives of the Housing Authority in order to become fully informed about these proposed developments. At the meetings held to date, a number of the sites have been disapproved in some areas and others approved by the Community organizations.

   The Department of Development and Planning has made preliminary review of the sites and found a number which are not properly zoned, are not appropriate for housing, have been acquired for other public uses, where private construction is already under way, or appear to be unacceptable for a variety of other reasons.

The City Council and the Chicago Plan Commission will give expeditious and full consideration to all the sites as soon as the community meetings and technical reviews permit. Based upon the information presently available, it is expected that many of the sites will not be satisfactory and that alternative locations will need to be determined.

It is anticipated, however, that sites suitable for use by Chicago Housing Authority in accord with applicable law will be identified and processed by the City to permit acquisition by CHA to commence in accordance with the following schedule:

Sites for 500 units by June 15, 1971;

Sites for 350 units by September 15, 1971;

Sites for 850 units by December 15, 1971;

To the extent that sites are necessary in addition to those already given preliminary approval by HUD (see letter to the Executive Director of CHA dated March 3, March 13, and May 28, 1970), such sites will be submitted to HUD for review and determination in an expeditious manner so as not to interfere with the foregoing timetable. It is contemplated that these housing units will be constructed by the Chicago Housing Authority; however, with the concurrence of HUD, some or all of said units may be developed under the turnkey methods.

2. The Chicago Housing Authority, by resolution, authorized its Executive Director to contract with the Cook County Housing Authority to enable the Chicago Housing Authority, in cooperation with the Cook County Housing Authority, to develop in 10 communities outside of the boundaries of the City of Chicago additional sites which will provide for approximately 230 dwelling units. It is anticipated that the CHA will locate additional sites outside Chicago, but within Cook County, for approximately 270 dwelling units and that it will similarly pursue development of such sites in cooperation with the Cook County Housing Authority.

3. The Chicago Housing Authority will lease throughout the metropolitan area, pursuant to Section 23 of the United States Housing Act, not less than 75 housing units for low-income families (by June 15, 1971), and thereafter an additional 75 housing units for low-income families per month until the present 600 unit authorization has been utilized and shall submit a report of progress by June 15, 1971.
4. The Chicago Housing Authority has indicated that it will initiate a program to acquire from FSLIC 200 units, perform the necessary rehabilitation and lease to low-income families. Specific properties will be identified by June 15, 1971, with contracts for rehabilitation award by September 15, 1971.

F.

OTHER DEVELOPMENTS

New financing devices using non-federal sources of money are anticipated to become available which will permit local not-for-profit corporations to undertake development of housing, servicing the needs of families whose incomes are the same as the present CHA eligibility requirements. These developments which rent units to such low-income families will have rents comparable to the Chicago Housing Authority. In addition, to the extent permitted by applicable law, the Chicago Housing Authority may enter into partnership arrangements with not-for-profit sponsors for the development, management, and leasing of units.

The following are the long-range developments which the City of Chicago anticipates that it will undertake in cooperation with the other agencies involved in its continuing effort to provide adequate, safe, and sanitary housing for all of its citizens:

1. The Chicago Housing Authority and the Chicago Dwellings Association have identified a number of sites in the urban area (such as the former Bridewell Farm) for housing development with units to be made

available for moderate and low-income families. This will require cooperation and participation by all levels of government.

2. The City will identify obsolete and deteriorated commercial strip frontage and abandoned or vacant factories throughout the City for development of new housing. The new housing developments must be so established in a comprehensive manner not to overcrowd existing public facilities nor be in detrimental locations. With the many miles of existing strip commercial zoned areas in the City, extensive areas could be acquired and cleared with minimal displacement but with a substantial increase in the housing supply.
3. HUD should require that all developments in the metropolitan area funded through the Illinois Housing Development Authority will provide 10 percent of the units for low-income families. Recognizing that HUD has allocated funds specifically for utilization by State Development Authorities, it is appropriate that part of that fund allocation be conditioned upon the expansion of low-income housing in the metropolitan area.
4. New Communities (New towns in town) within the City are proposed to be developed in such areas as Goose Island, the railroad yards south of the Loop, the obsolete slips and lumber yards along the south branch of the Chicago River and in the Lake Calumet vacant land area. These new communities would provide a range of housing types and prices along with necessary shopping and institutional facilities.
5. All land in the metropolitan area presently owned by the various agencies of offices of the Federal Government should be identified to determine which of the sites (such as Fort Sheridan) could be made available for housing development. Housing developments on these sites should be undertaken to provide a mix of moderate and low-income units with the necessary funding conditioned upon such commitments.
6. In addition to the utilization of modular construction for town house development, explorations are under way for increasing the use of new systems building techniques; such as panel walls and pre-case concrete

slab. A specific Section 236 project that will be site assembled from factory produced components will be under construction shortly.

To the extent that sites for units are acquired and construction under way for low-income families pursuant to programs outlined in this Section F, such units will add to or may substitute for a portion of the proposed units then remaining to be developed under other sections of this part of this letter of intent.

PART II. UNDERTAKINGS BY HUD

It is my understanding that the Department of Housing and Urban Development intends to cooperate with the City in achieving the foregoing objectives by providing funds and other assistance as follows:

A.

LETTER OF CONSENT

HUD will issue a Letter of Consent to permit the City to acquire certain properties included in the Second Year Neighborhood Development Program Application, which properties are identified in Exhibit A, attached hereto; such Letter of Consent to be issued by June 15, 1971, provided the City has made reasonable progress toward achieving the objectives set forth in Part I, above.

B.

ANNUAL CONTRIBUTIONS CONTRACTS

When the Chicago Housing Authority has accomplished the necessary preliminary steps, HUD will execute Annual Contribution Contracts with the CHA and with other appropriate local bodies for the public housing units described in Part I above.

C.

SECTION 235 HOUSING

1. In cooperation with the City of Chicago and its obligations as delineated herein with respect to Section 235 Housing, HUD will issue commitments for mortgage insurance and interest subsidy payments for the 500 single-family or town house units and it is contemplated that the commitments will be issued promptly to assist the City in accomplishing its objectives.
2. In order to implement the City's intention to supply units of Section 235 Housing to low-income families, HUD will promptly approve the use of Model Cities funds to accomplish the objectives as indicated herein.

D.

SPECIAL LEASING PROGRAM

As its matching share for the initial stage of the City of Chicago's special leasing program, HUD will approve the use of up to one million dollars ($1,000,000) of Model Cities funds on a matching basis through December 31, 1971, and thereafter will allow the City to utilize additional federal funds available for such expenditures to assist the City in implementing later stages of its special leasing program, as set forth in Part I above.

E.

MODEL CITIES FUNDS

Upon acceptance of this letter of intent, HUD will approve an amendment to the first year Model Cities Program, extending through June 30, 1971.

HUD promptly will approve the second year Model Cities Program, said second year ending December 31, 1971, provided that the City by June 15, 1971, has approved

sites for 500 units of public housing suitable for use by the Chicago Housing Authority and has made reasonable progress toward achieving the objectives set forth in Part I, above.

F.

SECOND YEAR NDP

HUD promptly will approve full implementation of the second year NDP, said second year ending December 31, 1971, provided that HUD finds the City has by September 30, 1971, reasonably accomplished the objectives set forth in Part I, above.

G.

LOAN AND CAPITAL GRANT CONTRACT

HUD promptly will approve the execution of a Loan and Capital Grant Contract for the Douglas-Lawndale Rehabilitation Project, Project No. Ill. R-129, which project was the subject of a Letter of Consent dated August 2, 1968; provided that HUD finds the City has by September 30, 1971, reasonably accomplished the objectives set forth in Part I, above; and further provided that HUD's obligation in regard to the amount of the capital grant shall not exceed the existing grant reservation for such project.

It is understood between the City of Chicago and the Department of Housing and Urban Development that the basic objectives contemplated by the parties shall continue to be the objectives of the parties in the implementation of the various programs, as set forth herein. The above programs are directed at providing 4300 units of low-income housing. It is understood that changes in Federal or local law or regulations may permit or in fact require modifications to the program outlined above. It is agreed that proposed modifications may be made to this memorandum of intent if concurred in by all signators to this statement. The parties recognize that these objectives can only be achieved through their mu-

tual cooperation and to that end the undersigned each pledge to use their best efforts and full strength of their respective offices in carrying out this letter of intention.

Very truly yours,

/s/ Richard J. Daley
RICHARD J. DALEY, Mayor
of the City of Chicago

CONCURRED:

/s/ Charles R. Swibel
CHARLES R. SWIBEL, Chairman
Chicago Housing Authority

APPROVED:

/s/ Geo. Vavoulis
GEORGE J. VAVOULIS, Regional Administrator
Department of Housing and Urban Development

cc: Charles Swibel

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FROM TRANSCRIPT OF
NOVEMBER 28, 1972

* * * *

[121] THE CLERK: Gautreaux versus CHA, adjourned hearing.

MR. POLIKOFF: Call Mr. Martin Sloane to the stand, Your Honor.

MARTIN E. SLOANE,

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POLIKOFF:

Q Will you state your name, please?
A Martin E. Sloane.
Q Spell it for the court reporter, please.
A S-l-o-a-n-e.
Q Where do you live, Mr. Sloane?
A I live in Washington, D. C.
Q By whom are you employed?
A I am employed by the United States Commission on Civil Rights.
Q How long have you been employed by the Commission?
A Six and a half years.
Q Beginning when, if you recall?
A Beginning in April of 1966.
Q And what is your present position with [122] the Commission?
A I am Assistant Staff Director for Civil Rights Program and Policy.
Q Is that the position you have held during the six and a half years?

A No. My first position with the Commission beginning in April of 1966 was as special assistant to the staff director, and in February of 1969 I assumed the position of the assistant staff director.

Q Could you briefly give us your employment history from the time you finished school—I assume you went to school but I will come to that in a moment, until you went to work with the Commission?

A From November, 1958 until February, 1961, I was assistant counsel at the Office of the Controller of the Currency in the U. S. Department of the Treasury; that is the Administrator of National Banks.

From February 1961 until July 1962 I was Chief of the Housing Section of the United States Commission on Civil Rights.

In July of 1962 I transferred to the VAN Housing and Home Finance Agency, which is the [123] predecessor agency of the Department of Housing and Urban Development, as an attorney-advisor working first on civil rights matters and later as a legislative attorney, and I was at the Housing Home Finance Agency and HUD until April of 1966 when I came—

Q Did the Housing and Home Finance Agency become HUD while you were still there?

A Yes, it did. The departmental bill was enacted while I was still with the Agency.

Q So you were with HUD or its predecessor for about four years before you returned to the Civil Rights Commission?

A A little less than four years, that is right.

Q Would you tell us about your education, Mr. Sloane?

A I have a BA Degree from New York University, an MA Degree in English Literature from the University of Michigan and a Law Degree from Columbia University.

Q Are you admitted to practice in any state?

A Yes, I am a member of the New York State Bar.

[124] Q Would you tell me briefly what the nature of your work has been with the Civil Rights Commission?

A Well, as I mentioned, I have been with the Commission two times, and from February 1961 until July of

1962, as Chief of the Housing Section, I had primary responsibility for drafting the Commission's 1961 Report on Housing which dealt largely with the impact of federal housing policies on civil rights.

When I came back to the Commission in 1966, my first assignment was as Deputy Director of the Commission's project on racial isolation in the public schools, which was a project undertaking at the specific request of then President Johnson. And while I had overall responsibility for the quality of the study and report, I had specific and sole responsibility for those sections of that report dealing with the relationship between housing, federal housing policy and school segregation.

Later, when that report was completed, my duties as a special assistant and staff director involved Congressional liaison. I was the Congressional Liaison Officer of the Commission, and this [125] involved preparing testimony and comments on legislation that was pending before the Congress on behalf of the Commission.

Q Could you tell me something, in a general way, about the Commission's involvement in the housing programs and housing policies; what does it do, and has it done any writing on that subject?

A Well, the Commission is a fact-finding agency. It has no enforcement powers or any power to redress individual grievances.

Our essential functions are to find facts and report them to the President and Congress with recommendations for legislative or executive action, and in performing those functions the Commission, from its very inception, and the Commission was established in 1957, has from the inception been intensely interested in the subject of housing. In fact, the very first report of the Commission in 1959, which dealt with three subject areas, included housing as one of the three. And in the course of its history, the Commission has held hearings throughout the country in some 15 cities and metropolitan areas ranging in different geographical areas, cities and metropolitan areas of different [126] sizes.

Q Do you have a list of the cities in which the housing hearings have been held?

A Yes, I do.

Q Just run down the list quickly.

A New York City, Chicago, Atlanta, Georgia, Washington, D.C., Los Angeles, San Francisco, California, Detroit, Michigan, Phoenix, Arizona, Memphis, Tennessee, Newark, New Jersey, Cleveland, Ohio, St. Louis, Missouri, Baltimore, Maryland, and most recently again in Washington, D.C.

In addition—

Q Have any federal housing officials participated in these hearings?

A Yes, they have. In 1959 the hearing in Washington, D.C. was exclusively concerned with federal officials and the policies which they were implementing at the time.

In addition, the hearing that the Commission held in June of 1971 involved high-ranking federal officials concerned with federal housing policy, including Secretary Romney, Attorney General Mitchell and other heads of agencies concerned with housing and urban development. [127] Q Has the subject of federal policies and the impact on housing practices been a part of the subject matter of these hearings?

A Yes, it certainly has, throughout the course of the Commission's history.

Q Has the Commission issued any reports dealing with housing? You have mentioned a section of one report, the racial isolation of the schools. Are there any other reports issued by the Commission on the subject of housing?

A Yes. As I mentioned, the Commission's first report in 1959 to the President and Congress dealt with housing in a very major way. It was one-third of the entire report.

In 1961 an entire volume of a five volume report to the President and Congress was concerned exclusively with housing.

In 1963 a report to the President and Congress dealt in part with housing.

In addition to the section on racial isolation in public schools dealing with housing and federal housing policy, we have done a report on the impact of federal installations, the location of the federal installations on equal housing [128] opportunity.

We have done an intensive study of the operation of the section 235 program of home ownership for lower income families. We published that report in 1971.

In addition, the Commission has done a series of reports, beginning in 1970, evaluating the entire federal civil rights enforcement effort, and a major part of that initial report and the follow-up report has been an evaluation of the Department of Housing and Urban Development and other federal agencies concerned with housing and urban development.

Q Would you describe what role, if any, you have played in the conduct of these hearings and in the preparation of these reports?

A I have been involved in virtually every hearing that the Commission has held on the subject of housing in my stay at the Commission, and I go back to 1961, so all in all about eight years of service with the Commission. In 1961, the Commission Report on Housing, as I mentioned earlier, I drafted it. It was completely responsible at the staff level.

I mentioned that I was also solely [129] responsible for the housing sections of the report on racial isolation in the public schools.

The reports on federal installations and equal housing opportunity and the Section 235 program of home ownership for low income families was done under my supervision by staff members of my office.

In addition, the initial report evaluating the federal civil rights enforcement effort and the follow-up reports also were done under my supervision by staff members of my office with my participation.

Q Have you done any writing on the subject of housing other than for these Commission reports?

A Yes, I have. I have written a number of Law Review articles on housing and equal housing opportunity and at least one article in non-legal journals dealing with the subject of housing and fair housing.

Also, I have prepared testimony for commissioners for the staff director on matters relating to housing for appearances before Congress, and I have appeared myself representing the Commission before Congressional meetings.

[130] Q Mr. Sloane, has your work with the Commission and the Commission's body of work, as you have described it, disclosed any pattern with respect to housing patterns in metropolitan areas across the country?

A Yes, it has.

Q What is the pattern?

MR. MURRAY: Your Honor, may I have a standing objection to this entire line of questioning.

THE COURT: Your objection is overruled at this point, subject to a motion to strike if it appears to be irrelevant to the issues confronting this Court.

You may answer, if you remember the question.

THE WITNESS: Yes, I do, Your Honor.

BY THE WITNESS:

A As I mentioned, the Commission has held hearings in some 15 or 16 cities throughout the country. These are cities of a wide variety. They vary in size, they vary in location, they vary in the kinds of minority group population located there. Nonetheless we found, with certain minor variations, [131] precisely the same pattern in each of these cities and metropolitan areas, and the pattern is—consist of metropolitan areas increasingly separated, separated by the central city versus suburbs, poor versus affluent, black versus white. We found a consistent pattern of new housing going up almost exclusively in suburban areas and occupied almost exclusively by white families.

THE COURT: Read this last few words that he said. He is starting to speed up. It is about the suburban areas.

(Record was read.)

BY THE WITNESS:

A (Continuing) In addition, we have found that centers of employment also have been moving out to suburban areas and the jobs have been filled largely by whites.

In the central city we have found that they have been increasingly characterized by deteriorating housing, deteriorating sometimes to the point where they have to be abandoned, in central cities which are occupied increasingly by the poor and largely by the non-white poor.

In nearly every metropolitan area, [132] what we have found over the last decade, the population of the suburban ring has increased enormously. The population of the central city has either remained static or has declined.

And we have also found that what is responsible for this phenomena in metropolitan areas of population growth has been a massive exodus of white families from the central city, largely to the suburbs, and they have been replaced but not quite by an increase in the black population.

BY MR. POLIKOFF:

Q Now, Mr. Sloane, have you and your work at the Commission and the Commission in its studies and reports examined into the impact of federal housing policies on that pattern of housing practices that you have just described?

A Yes, we have.

Q Would you tell me, if you can—

MR. MURRAY: Your Honor, we have our standing objection.

THE COURT: To all of this, yes.

MR. MURRAY: All right.

THE COURT: You have not missed a thing, Mr. O'Brien.

[133] MR. O'BRIEN: Thank you, Judge.

(At this point Mr. O'Brien entered the courtroom.)

BY MR. POLIKOFF:

Q Would you summarize, please, what the development and impact of the federal policy has been?

A Well, in our view, after—

Q In this respect.

A Yes.

MR. MURRAY: Your Honor, excuse me, but may I also note another objection as to the competency of this witness to testify.

THE COURT: Well, I don't know how you become an expert in this field unless it is being in it for a long time. I am the judge of the competency and credibility of all witnesses, and I will assess it with whatever weight I think his background indicates it is entitled to.

MR. MURRAY: I apologize.

THE COURT: You don't have to apologize. I am glad you gave me a chance to get on the record. I have been waiting for one.

[134] BY MR. POLIKOFF:

Q Do you remember the question, Mr. Sloane?

A Yes, I do.

The federal government, through its housing programs and through its housing agencies, in our opinion, has been a major factor in the development of the residential patterns in metropolitan areas.

Q Could you be specific and explain just how and why you have come to that conclusion?

A Yes. There are two agencies and two sets of programs that I am referring to specifically; one is the Federal Housing Administration which operates mortgage—

Q Is that familiarly known as FHA?

A Yes, it is.

THE COURT: That we are not interested in in this case, are we?

MR. POLIKOFF: We hope to interest Your Honor in this.

THE COURT: You are trying to explode this all over the country. I will be settling people in Utah pretty soon if I let you go on.

MR. POLIKOFF: Your Honor, I will make [135] you one promise, that we are not talking about Utah or even about any other state than Illinois.

THE COURT: There is more land out there.

MR. POLIKOFF: But there is a lot of land in the suburban areas too, Your Honor, within Illinois.

THE COURT: At the price of Utah land?

MR. POLIKOFF: Let me say to Your Honor as to price, you may recall that we sent Your Honor a letter, which is part of the record in this case, maybe I should introduce it in evidence so we have got it here conveniently, pointing out that there is no land cost limit with respect to the public housing program. And, indeed—

THE COURT: Well, I assume that whoever is furnishing the money is not going to let them buy a lot on Wall Street for a million bucks to put up a two story housing unit. There must be some limitation.

MR. POLIKOFF: That is correct, Your Honor, but in the approval—

THE COURT: I know the country is profligate, but I didn't think it was that [136] profligate.

MR. POLIKOFF: In the approval of the development plan that is now in the pipeline, project 285, CHA's program, approved by HUD, the following appears in the letter from HUD, which is part of the record in this case.

Mr. O'Brien, this is Attachment No. 1 to CHA's report of September 30th, 1971, which has been filed before Your Honor.

HUD says to Mr. Humphrey, "Thirty-six of these sites are approved for further development. Although specific costs of a certain few sites is estimated to be as high as $12,500 per unit, the average cost per unit is estimated to be $4,100 odd dollars."

So that we have even within the city, in the specific programs involved in this case, site aprovals for land acquisition only that go in excess of $12,000 per unit, and as our letter to Your Honor pointed out, the aggregation of units, the three, six, ten on a single site can produce substantially large amounts of money for specific site acquisitions, all within a framework, Your Honor, of

there [137] being no statutory limits on the amount that can be spent for land for the public housing program.

MR. MURRAY: Your Honor, I would like to correct a misimpression that Mr. Polikoff is conveying to Your Honor about land cost. This is totally irrelevant in our opinion, but under the Housing Act, under Section 2, under the definition of the United States Housing Act, it says, "The term 'low rent housing' means decent, safe, sanitary dwellings within the financial reach of families of low income and developed and administered to promote serviceability, efficiency, and economy and stability."

Section 2, subparagraph 8 says, "The term 'acquisition cost' means the amount prudently required to be expended by a public housing agency in acquiring a low rent housing project or a slum clearance project." So there is some discretion with respect to land cost, and I think the observation Your Honor made in that regard is perfectly reasonable.

THE COURT: All right, let's go on, Mr. [138] Polikoff.

BY MR. POLIKOFF:

Q Would you go on, Mr. Sloane, and talk about the role, as you have seen it, with the Federal Housing Administration and relate that specifically, because so far in this case—

THE COURT: Just a minute, Counsel. I started out with some cases by your Plaintiffs against HUD and CHA. They had to do with low income housing. I ascertained and so declared, and it is the law of the district, of the circuit, that there had been over 20 years of discrimination in building low income housing. We set up an effort to—well, first of all, we stopped it from continuing in the future and suggested some remedies to try to overcome what had been done in the past. FHA and that type of thing was not in that lawsuit. I don't know how you are going to drag it screaming by the heels into this lawsuit. I wish you would indicate—

MR. POLIKOFF: I will try to do that, Your Honor. We are not going to drag it into this lawsuit. There is no agency known as FHA [139] anymore that is independent. FHA is a constituent of HUD, has no separate

corporate or other existence. It is an agency within HUD. And we are going to respond to Your Honor's—

THE COURT: Does FHA limit itself to low income housing, which I think is the subject matter of this lawsuit?

MR. POLIKOFF: It does not limit itself to it but it has programs which include low income housing.

THE COURT: Well, then, limit his remarks to the programs that include low income housing.

MR. POLIKOFF: Well, if Your Honor will permit, you asked a question yesterday, or you made a comment yesterday when I said that we were going to show, or we were going to try to show, that the past activities of HUD had helped to produce the segregated situation not only within the cities and within the suburbs, but city against suburb that constitute a part of the problem of relief in the case. If we didn't have, Your Honor, a white segregated suburb surrounding an increasingly black [140] segregated city, we would not be here asking Your Honor for the form of relief we are asking.

THE COURT: Isn't this an economic matter rather than a racial matter?

MR. POLIKOFF: No, Your Honor.

THE COURT: It isn't?

MR. POLIKOFF: It is a matter that—

THE COURT: I have some black neighbors that are able to live in the suburbs. You have some black neighbors that are able to live in the suburbs. It is an economic matter.

MR. POLIKOFF: Well, the evidence will show, Your Honor, that there are public housing projects in the suburbs, but they are in the ghettoized areas of the suburbs exclusively.

THE COURT: Well, we will wait until that evidence gets here.

MR. MURRAY: I am going to object to Counsel testifying. This is far beyond the allegations of the complaint.

THE COURT: He is trying to tell me what he anticipates the evidence will show. I am waiting for this to occur.

[141] You may proceed.

BY MR. POLIKOFF:

Q All right, will you succinctly, Mr. Sloane, describe the role of the FHA in developing the pattern and contributing to the pattern you mentioned a moment ago?

A Yes. Within the first 15 years of FHA's existence, that is from 1934 to roughly 1949, this federal agency was an active exponent of racial segregation and racial discrimination in housing.

MR. MURRAY: I am going to object to that, Your Honor. That statement should be stricken from the record. There is no factual basis in this record to show that FHA, prior to 1965—it was never a part of the Department of Housing under Urban Development, and that statement has no support in this record and it is beyond the scope of the allegations in the complaint. We are not dealing with the Federal Housing Administration, and I move that that remark be stricken from the record as being irrelevant and immaterial and not supported by the facts.

THE COURT: This is, Mr. Murray, just like a psychiatrist who comes in as an expert and [142] gives an opinion of the mental condition of someone that he has —a patient that he has seen. He makes a statement that he is or he isn't nuts, and then he must give a reason and then when they start giving those reasons, you laugh them out of Court.

Now, I am going to let him say what he says, and then we will listen to his reasons and see whether we have to laugh him out of Court.

BY MR. POLIKOFF:

Q Will you state the reasons, Mr. Sloane, for the conclusion that you just stated a moment ago?

A That FHA—

Q The factual basis on which you said what you just said.

A FHA's own underwriting manuals from the beginning until roughly 1947 contained instructions to its underwriters that they should avoid subdivisions which had what was called "inharmonious racial groups." They also warned about the—

THE COURT: Tell us about how FHA functions in these underwriters? Are you [143] talking now about banks and savings and loans who are agents of FHA or who are seeking compensation from FHA or funds from FHA to loan for them to make money on?

THE WITNESS: Your Honor, I am talking about FHA employees who evaluate the merits of—

THE COURT: Who are the underwriters that you just referred to? What function do they perform? Tell me what an underwriter is.

THE WITNESS: Well, FHA underwriters evaluate applications made by builders who are coming in for FHA assistance in setting up the subdivisions, and this is one of the—was one of the prime—

THE COURT: And are the FHA underwriters, are they employees of FHA or are they other agencies, lending institutions?

THE WITNESS: They are employees of FHA.

THE COURT: All right.

THE WITNESS: And the FHA also advised its underwriters—

BY MR. POLIKOFF:

Q Is "underwriter" a descriptive term of a [144] category of employees?

A Actually it was appraisers that were being advised. The manual is called the underwriting manual and it was issued to FHA employees, and it was for the purpose of guiding them in making their decisions and evaluations about the merits of applications for subdivision assistance.

Q All right, continue.

A FHA also, in its underwriting manual, advised of the necessity for the filing of racially restrictive covenants.

MR. O'BRIEN: Your Honor, if it please the Court I have to object to this. Here is a man rambling on about manuals. If the manuals exist, I can read a lot faster than he can tell me about it, and I object on the technical ground but also to try to bring these proceedings to some termination point.

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THE COURT: In view of the fact, Mr. O'Brien, that your client has nothing to do with FHA—do they?

MR. O'BRIEN: No, sir. But there is something offensive about, to me, being in a courtroom and having a man rambling on about [145] what some document not in Court says. I do not like to take his word for it, I would like to read the document and, as I say, I can read in silence a lot faster than sitting here listening to this interminable testimony.

MR. MURRAY: Your Honor, we will join in the objection.

THE COURT: You know, when you get to Washington you acquire a lot of scoop and then you have to have a public forum to release it on. Now, let's not spoil one of the functions of bureaucrats in Washington. Let's let him go for awhile. This evidence in regard to FHA does not apply to your client, of course, and it may not apply to anything in the lawsuit, but I am going to let him go on.

MR. POLIKOFF: Your Honor, we are cognizant of the pending motion to strike anything that you deem to be irrelevant. This testimony will not be lengthy. I promise you that in my opinion it is relevant.

THE COURT: It will be lengthier if you don't get back to it, which I gave you permission to do.

[146] BY MR. POLIKOFF:

Q All right, you have got an invitation and permission to proceed, Mr. Sloane.

A FHA's policy, in the Commission's view, was one that could be characterized as separate for whites and nothing for blacks. In fact, as late as 1959 the Commission estimated that the post-war housing, much of which —that was built with FHA assistance, only two per cent or less than two per cent had actually gone to nonwhites. And the importance of FHA lay in two parts, one, it represented a major portion of the housing market, and particularly the post-World War II housing market, and its policy naturally affected the housing which it controlled. Also, FHA was a leader in the entire housing and home finance community, and its practices and policies, and particularly its practices and policies with regard to racial discrimination, tended to be adopted by the private housing and home finance industry.

Q Was the operation of this financing program, this mortgage finance program you just described, primarily in the suburban areas?

A Yes, it was.

[147] Q What role did FHA play during this period in the inner cities, that is the central cities?

A Virtually no role at all. It virtually excluded the central city from the benefits of its program, red-lining, in effect, excluding—

Q What was the phrase?

A Red-lining.

Q What does that mean?

A Excluding large sections of the central city, rendering them ineligible for FHA mortgage insurance.

Q What was the effect of the combined racial harmony policy in the suburbs and red-lining in the city?

A Well, it tended to further encourage white flight from the central city by facilitating their acquisition of decent housing in the suburbs and making it almost impossible for whites to obtain decent housing in the central city by making mortgage money unavailable.

Q Now, did you also study in your work at the Commission the operation of the public housing program during this same historical period?

A Yes, we did.

[148] Q Would you tell us what the Commission's examinations of that program disclosed?

A The public housing program as administered originally by the United States Housing Authority operated somewhat differently than FHA. The United States Housing Authority, from the beginning, insisted that minorities get their fair share of housing. With respect to whether this fair share would be acquired on a racially segregated or racially integrated basis, the United States Housing Authority and its successor agen-

cies took no position at all. Their position was that this was up to local housing authorities.

Q In fact, how did the public housing program operate?

A On the basis of Commission investigation in nearly every community we looked at, public housing was provided on a racially segregated basis.

Q Was the segregation practiced with respect to both site selection and tenant assignment or only one of those?

A No, both. Separate lists of applicants generally was kept, and on the basis of race, and tenant assignments were made on the basis of those [149] racially separate lists.

In addition, site selection policies generally were that sites for black projects were selected in black areas and sites for projects designated for white occupancy were selected in white areas.

THE COURT: Have you any evidence of that in Chicago?

THE WITNESS: Your Honor, I do not have that evidence personally.

THE COURT: All right.

Do you include Chicago as illustrative of what you just said?

THE WITNESS: Your Honor, this is the pattern that we found nationwide.

THE COURT: I don't know why I am concerned with nationwide if it hasn't any local application, Mr. Polikoff.

MR. POLIKOFF: The relevance of nationwide, Your Honor, is that if—as will come in a moment—if HUD's best efforts are to be considered as a possible reliance here, we are interested in what HUD has done generally and not just in Chicago, and I want to remind Your [150] Honor that the evidence—I may have missed what your question was directed to. If it is directed to the specific coding kind of tenant assignment practices, we do have evidence in the case that that was employed in Chicago.

THE COURT: I mean, we have rectified that, haven't we?

MR. POLIKOFF: Pardon?

THE COURT: Haven't we rectified that?

MR. POLIKOFF: By your order of July 1, '69.

THE COURT: So that is no longer a problem confronting the Court.

MR. POLIKOFF: That is correct, but—

THE COURT: We have no problem, as I understand it right now, in regard to segregated new housing.

MR. POLIKOFF: We are talking, Your Honor, the relevance of what we are saying is that Your Honor as a court of equity ought to know what has contributed and who has contributed to the situation that now confronts the Court, at least in the opinion of the Plaintiffs, [151] with respect to the difficulty of providing an effective remedy, and the historical—

THE COURT: As I understand it, what has brought this about has been the contumacious conduct of the city administration and the Council. That is what brought about this lawsuit and that is what we have endeavored to rectify by the order heretofore entered.

MR. POLIKOFF: And in rectifying it you are confronted with a fact, which I am going to insist that you cannot ignore, and that fact is that the City of Chicago is going increasingly black and the suburbs are remaining substantially white, and the reason that that situation exists is in part because the Defendant, the Department of Housing and Urban Development, has, over the years, carried on the dual kind of policy that Mr. Sloane has described, facilitating through the FHA operation the development of all white suburbs and facilitating, if you will, the maintenance and preservation through the public housing program and the FHA red-lining program of the all black cities that we are [152] increasingly faced with. And that, Your Honor, is a problem for relief in your case.

If for example—let me just digress for a moment into an argument.

MR. MURRAY: Your Honor, let's proceed with the testimony, and if Counsel wants to make closing arguments, he can at the proper time.

THE COURT: He is going to make closing arguments. He always does. Let's go on and get this witness off the stand.

MR. POLIKOFF: All right, Your Honor.

BY MR. POLIKOFF:

Q Mr. Sloane, have you also examined the current operation of federal housing programs as distinguished from the history of their past operation that you have described for us?

A Yes, we have.

Q Have you in particular examined the description which HUD filed in this case on April 26, 1972, of its current programs? I am referring to that 62 page document that describes its program?

A Yes, I have.

Q Are you, from your work with the Commission and study of housing practices, are you generally [153] familiar with the HUD programs that are described in that document?

A Yes, I am.

Q Would you tell the Court which of the programs that are listed in that 62 page document provide housing or are designed specifically to provide housing for low income people?

A There are four specific programs.

Q And which are they?

A One is low rent public housing. The second is—

Q That is the conventional public housing program of the sort run by CHA?

A That is right.

Second is the rent supplement program, which reaches the same income group as the public housing program. And then there is the Section 235 program of home ownership for lower income families and its companion program, Section 236 of rental housing for low income families. These latter two programs are primarily for families of moderate income, but there is a considerable overlap with the families eligible for public housing.

Q So we have got two programs for low income [154] housing and two for moderate which overlap at the upper end of the income scale, is that right?

A That is correct.

Q Don't the other programs that are listed in the 62 pages also provide low income housing?

A By and large, these are community development programs which while they may have a housing element in them, they are not housing programs; for example, in urban renewal or in new communities, if the plan calls for low income housing, the sponsor must come in under one of the four programs I described earlier, but these are either urban renewal or new communities or other community development programs that carry provisions for housing themselves.

Q So that if anyone is going to provide low income housing in connection, let's say, with an urban renewal development, the provisions of that low income housing would flow through one of the four programs you described?

A That is right.

Q Even though it may have its inception in an urban renewal effort of some sort?

A Yes, sir.

[155] Q Has the Commission studied the current operation of these four low income housing programs?

A Yes, we have.

Q Have you studied any of them intensively?

A Yes, as I mentioned earlier, we did do an intensive investigation of the Section 235 program, and that resulted in a report issued in 1971. And our study was conducted at the time when the two years had already elapsed after enactment of the Federal Fair Housing law, Title A of the Civil Rights Act of 1968.

Q Could you tell me what the study of these four programs has disclosed so far as racial patterns are concerned, both as to occupancy and location?

MR. MURRAY: Your Honor, I'm going to object to this testimony. I think the best evidence of what the report discloses is the report itself.

THE COURT: I would rather listen to him than read the report.

The objection is overruled.

BY THE WITNESS:

A (Continuing) In connection with our study of the Section 235 program, we looked intensively—

[156] THE COURT: You may cross examine him and destroy him if there is something he is saying that is not backed up by the report, and I encourage you to—

MR. MURRAY: It is very difficult for me to cross examine when I asked the Plaintiffs to produce all documents and state all facts which they were to rely upon and I didn't get the documents, Your Honor.

THE COURT: That is the function of cross examination.

You may proceed.

BY THE WITNESS:

A (Continuing) In connection with our study of the 235 program, we looked intensively at four cities and metropolitan areas. They were Philadelphia, St. Louis, Little Rock, Arkansas, and Denver, Colorado, and we found that the pattern in these four cities was the same, despite the fact that they are geographically separate and very different in terms of size.

BY MR. POLIKOFF:

Q And what is the pattern?

A The pattern was that inner city housing [157] used under the program was generally deteriorated, dilapidated, often going to black families. New housing frequently was going up in the suburbs and it was occupied exclusively by white families.

Q Did Secretary Romney testify before the Commission in respect of that particular study?

A Yes, he did, in June of 1971, and the Commission asked him, presented to him our findings in connection with this Section 235 study, and he agreed that this was true, that our findings of racially separate occupancy was indeed true. He also conceded that this was true—

MR. MURRAY: Objection, Your Honor.

THE COURT: Overruled.

BY THE WITNESS:

A (Continuing) —of the housing market generally. He said, "You don't have to convince me that we have had and still do have a dual housing market."

THE COURT: Is there any question in your mind that what you call the white suburbs could be classified also as the affluent suburbs and the black inner city could be [158] classified as the poor inner city?

THE WITNESS: Your Honor, the interesting thing about this study—

THE COURT: Would you like to answer my question or would you like to duck that one?

THE WITNES: I, Your Honor?

MR. POLIKOFF: The question is directed to you, Mr. Sloane.

THE WITNESS: I don't want to duck it, Your Honor.

THE COURT: The question is, would you say that the white suburbs are the more affluent of the two classes?

THE WITNESS: Yes, I would, Your Honor.

THE COURT: And that the black residents of the central city are in a lower state of poverty than the suburbanites?

THE WITNESS: Generally, yes, but our study shows that here we had housing which was within the same income limits, eligible families, white or black, within the same relatively low income limits, and yet the precise pattern found in the general housing market was found in connection with the 235 program, and the economic rationale, [159] which is often presented, simply wasn't there.

BY MR. POLIKOFF:

Q In other words, Mr. Sloane, this description you just gave of the 235 low income housing, at least so far as the overlap is concerned—

A That is right.

Q —and that was placed in the suburbs, is that correct?

A That is right.

Q And it was nonetheless occupied exclusively or largely by whites?

A That is right.

Q And the same housing, that is for the same income level in the cities, tended to be occupied exclusively by blacks?

A Yes. And we also looked into reasons why this pattern was repeated in connection with the 235 program.

Q And what was that—

A We found it wasn't an accident. We found the same factors, overt discrimination or subtle forms of discrimination by representatives of the private housing and home finance industry were responsible, racial steering by real estate brokers, [160] steering in the sense of telling black families "This is the house that you have to buy. There is nothing else."

Telling white families, "You don't want to live there You want to live here."

This discrimination through advertising by FHA to build—

THE COURT: We are correcting all of those things in Court day after day. I have had a dozen cases like that before me. It no longer has to be done by changing the rules for FHA. They bring them into Court and fine them and put them out of business. That has had more effect than your Commission or all of the other commissions that I am aware of.

BY MR. POLIKOFF:

Q Mr. Sloane, did I ask you whether you explored the other three programs and found the same pattern?

A Yes, we have. We have not explored those three programs in as much depth as the 235 program, but we have kept a continuing interest in their operation from the beginning.

Q Have you examined the current project [161] selection criteria of the Department of Housing and Urban Development for the site selection aspect of these programs?

A Yes. The Commission has looked at them very closely and provided comments on two occasions to the

Department of Housing and Urban Development, and those comments were prepared under my direction.

Q And could you summarize for us succinctly what the nature of the comments is?

MR. MURRAY: Your Honor, I am going to object. I assume these comments are in writing, Mr. Sloane?

THE WITNESS: Yes, they were.

MR. MURRAY: I am going to object. I think the best evidence as to what comments of the Civil Rights Commission were is the document itself.

THE COURT: Are there such documents available?

MR. POLIKOFF: Yes, Your Honor. Mr. Murray knows them well. In case he doesn't have them handy, I will give him extra copies, but they are lengthy letters and there is certainly nothing wrong with having a witness [162] state, so that the Court and everybody else can understand succinctly what they amount to.

MR. MURRAY: I would like the record to be clear on this, Your Honor. This is the first time I have seen these documents.

THE COURT: All right.

MR. POLIKOFF: They are addressed to Mr. Murray's boss in this case, Your Honor, Mr. Romney.

MR. MURRAY: Well, he won't be for very long, Your Honor.

BY MR. POLIKOFF:

Q Go ahead, Mr. Sloane.

A Well, the basic problem that the Commission has would be project selection criteria, which were essentially site selection criteria to facilitate equal opportunity, is that these project selection criteria do not represent a comprehensive metropolitan wide plan, rather they represent a project by project approach, and in the Commission's view this kind of an approach is incapable of making very much of a dent in terms of reversing patterns of racial segregation in residents.

Q Did the Commission state why the private [162] selection criteria and the project by project approach lacked that potential?

A Yes. Essentially there is nothing to compare each project application with, to take it on its own merits, and

in our view this is no way to accomplish a metropolitan wide desegregation.

THE COURT: In your opinion or your Commission's opinion?

BY MR. POLIKOFF:

Q Have you examined the proposed judgment order submitted by the Plaintiffs in this case, Mr. Sloane?

A Yes, I have.

Q Does it provide a plan of the sort the Commission has said is lacking in the project selection criteria?

A Yes, it does. I think it is superior in at least two respects, one is that it does represent a plan by which some effort at accomplishing metropolitan wide desegregation, or at least reversing the current trend toward metropolitan segregation can be accomplished. Secondly, and equally important, is that it does provide some assurance that once the sites to public housing are found in non-segregated [164] areas, that the public housing applicants, those on the waiting lists as the Plaintiffs' class will get a priority in acquiring housing at those sites, and this also is lacking in—

Q In other words, there is no assurance under the project selection criteria that any member of the Plaintiff class can have access to any public housing project if in fact it is provided?

A That is right, there is no assurance whatsoever.

THE COURT: Are you aware that CHA has been authorized for three and a half years to find suburban sites for 500 units in the suburbs, and as a result of the three and a half years they found none? Are you aware of that?

THE WITNESS: Yes, I am.

THE COURT: All right.

BY MR. POLIKOFF:

Q Incidentally, with respect to their finding none, Mr. Sloane, zoning was mentioned here yesterday, is the public housing program one that by contrast with these other programs that you mentioned, for example, 235, has access in theory to suburban areas with respect to zoning problems, is it—that is a [165] poor way to ask a question. Let me try and see if I can do better.

Is the public housing program any more susceptible than, say, the 235 program to the kind of exclusionary zoning practice that would preclude it from being located in suburban areas?

A It is easier to overcome those exclusionary practices in public housing.

Q Why is that?

A In that, for example, large lot zoning ordinances have the effect of increasing the cost of land, and we are dealing with programs like rent supplements or Section 235 or 236. There are statutory limits on the cost of housing which may not be exceeded, and this includes the cost of land. In public housing the cost of land is not included by statute in the project development cost.

Q Mr. Sloane, the HUD order that is proposed in this case is essentially what has been called a best efforts order, relying on the best efforts of HUD in carrying out and administering its existing program to provide relief for the Plaintiff class; based on your studies of the HUD programs in operation, its predecessor in current programs, and [166] particularly on your study for the Commission of the four programs that focus on low income housing, in your opinion would the Court be warranted in relying upon HUD's best efforts to remedy the effect of racial segregation in the public housing program in Chicago?

A In my opinion past experience suggests that HUD cannot be relied upon absent other constraints from using its own best efforts.

Q Can you explain why you hold that opinion?

A Its entire history, and I can give one specific example—

THE COURT: You know history changed three years ago.

THE WITNESS: Your Honor, I can give one specific example, when HUD was under an affirmative obligation, affirmative general obligation to stop discrimination—

BY MR. POLIKOFF:

Q Will you give us that? Was that within the last three years or not?

A No, it was prior to the last three years. It was when President Kennedy issued his executive order on equal opportunity and housing directing [167] all agencies of then Housing and Home Finance Agency to prevent discrimination, and the response of the two agencies, the agencies of HHFA suggest clearly to me that they cannot be relied upon to respond to simply a general directive. The Federal Housing Administration chose as its sole mechanism for carrying out the directive the processing of individual complaints. I was with the Housing and Home Finance Agency at the time. There were precious few complaints that came in.

Q Let's come down to more recent history. The Judge has said history changed three years ago. In 1968 there was a Fair Housing Law passed, was there not?

A Yes, there was.

Q Specifically imposing upon HUD an affirmative obligation to provide fair housing, correct?

A That is right.

Q You described your examination of the 235 low and moderate income housing program; did that examination postdate or predate the Fair Housing Law of 1968?

A It postdated it. Our investigation occurred during the latter part of 1970 and early [168] 1971, which was two and a half to three years after Title 8 had been enacted.

Q And is it a fact then that notwithstanding the 1968 Fair Housing Law mandate, subsequently the 235 program was operated with the racially segregated effect that you described?

A That is right.

MR. MURRAY: Your Honor, I am going to object to that. It is totally irrelevant.

THE COURT: Is 235 involved in our lawsuit?

MR. MURRAY: No, it is not, Your Honor. In fact, Your Honor, we made comment to that particular matter in—

THE COURT: I assume that you have not forgotten your right to move to strike?

MR. MURRAY: I have not, Your Honor.

MR. POLIKOFF: Your Honor, 235, as has been testified, is a program that overlaps the low income housing—I am sorry, the low income level of people who are eligible for public housing. It is one of the programs that was specifically mentioned in the Court of Appeals opinion as a possible method of [169] relief in this case. And the general relevance of what has been testified to goes beyond the particular program, even though that program is relevant, as I have just said, because what we are talking about here is your question, can't I rely on HUD's best efforts. Give them a try.

Here is an illustration, a recent illustration postdating the three year period you mentioned in which HUD's best efforts, in a program that involves low income housing, has produced the same racial segregation pattern that you are familiar with in the public housing field.

THE COURT: Is that in Chicago, Mr. Sloane?

THE WITNESS: Chicago, Your Honor, was not one of the four cities that we investigated.

BY MR. POLIKOFF:

Q Did you find any difference in any city across the country in the way—was there any exceptions to the pattern you described?

A There was not.

Q Incidentally, is low income housing provided in the private market in this country today, [170] that is, apart from a HUD program or a conventional public housing program?

A Aside from mobile homes, no, the private market is incapable of producing housing within the reach of low income families.

Q So that the kind of people we are talking about get housing, if at all, through these government programs?

A. That is right.

MR. POLIKOFF: I have no further questions, Your Honor.

THE COURT: Mr. Murray?

CROSS EXAMINATION

BY MR. MURRAY:

Q Mr. Witness,, you testified concerning the FHA housing manual, I believe, prior to 1947, is that correct?

A That is right.

Q The policies of FHA. And you are an attorney, is that not correct?

A That is right.

Q Are you familiar with the case of Plessy versus Fergeson?

A Yes, I am.

[171] Q What did that case hold?

A It held that state law requiring separate accommodations on railroad cars did not violate the equal protection clause of the Constitution.

Q And that was the claim of separate but equal case, is that correct?

A It is my understanding it is.

Q And Brown versus the Board of Education was not decided until 1954, is that not correct?

A That is right.

Q And is it not a fact, sir, and I am directing your attention to the low income housing program, that the federal government has removed itself from the direct construction and management of housing. The local communities, either through their local government or through special housing authorities were to decide whether or not they wanted to come under the program and, if so, how many housing units they want. The properties were to be owned and managed by the localities. Is that a fair statement as to the statutory set-up?

A I am not sure what you are reading from, sir.

Q Well, I'm asking you if that is a fair [172] statement?

THE COURT: Listen to what he says and answer his question as to whether that is a fair summary as to what the various functions of the various participants in these programs is.

BY THE WITNESS:

A To the extent that this suggests the federal government has no role in the provision of low income housing I would not agree.

BY MR. MURRAY:

Q You would not agree?

A I said to the extent that this suggests that the federal government has no role.

Q The role—let me make it clear.

Except for the funding and using its credit and finance, that is the role the federal government has, is that not correct?

A No.

Q Well, —all right.

THE COURT: You are going to find out what your duties are from this witness.

MR. MURRAY: Yes, it seems that way. I must have misread the statute.

[173] THE WITNESS: The federal government does more than just provide—

MR. MURRAY: Let me—Mr. Witness, please.

THE COURT: Don't argue with him. Ask another question.

BY MR. MURRAY:

Q Under the declaration of policy of the Low Rent Housing Act of 1937, it is hereby declared to be the policy of the United States to promote the general welfare of the nation by employing its funds and credits; is that not what the declaration of the policy is, funds and credit?

A I think the policy goes beyond that.

Q Would you please answer my question, Mr. Witness, yes or no? Isn't that what the declaration of the policy says, funds and credit of the United States?

A That is not a complete statement of the declaration of the policy.

Q Directing your attention to the rent supplement program, are you aware that under the second supplemental appropriation act of 1966, Public Law 89-426, approved on May 13, 1966, no part of the appropriations or contract authority [174] could be used to incur any

obligations in connection with any dwelling unit or project which is not either part of a workable program or which is without local official approval for participation in the rent supplement program? Is that not correct, sir?

A Yes.

Q Thank you.

And with respect to Section 235, is it not correct that 235 has certain mortgage limits on it? Is that not correct?

A Yes, it is.

Q I believe the maximum amount—and that mortgage limit is related to the number of bedrooms in that particular project, is that not correct?

A To some extent, yes.

Q And that the maximum amount of mortgage that can be obtained under Section 235 is approximately, I believe, $24,400, is that not correct?

A I believe that is roughly correct.

Q You did say you read our submission to the Court dated April 26, is that not correct?

A Yes.

Q And I believe we stated in that submission, [175] with respect to 235 housing, it has been the experience of HUD, in relationship to this program, that this program, due to the inflationary cost and the increases in taxes since this enactment, that it does not meet the needs for low income public housing tenants; did you read that statement, sir?

A What page are you referring to?

MR. MURRAY: Strike that last question.

BY MR. MURRAY:

Q Is it a fair statement that—

THE COURT: Well, then, we will strike the answer —well, he didn't make one. All right.

MR. MURRAY: Yes.

BY MR. MURRAY:

Q Is it a fair—in your investigations, wasn't it your experience that the program, due to inflationary costs and increase in taxes since enactment, that it in fact does not meet the needs of low income housing tenants?

A This wasn't the fact.

Q This wasn't part of your examination?

A What we found, first of all, is that the program is geared to public housing income levels. [176] The maximum income level for the participation program is 135 per cent of the initial occupancy for public housing. The subsidy is, of course, not deep enough to reach truly low income families. The subsidy amounts to reducing the interest rate to one per cent, but it does have a considerable overlap, as I testified to before. It is essentially a moderate income program.

Q All right. Let me ask you this, does HUD provide a subsidy for the taxes to be assessed against the property?

A I am not sure.

Q You don't know?

A No.

Q All right, and what about operation and maintenance costs and upkeep of the property, do they provide subsidies for that?

A I believe not.

Q Other than the interest subsidies, is it not a fact that HUD does not provide any assistance whatsoever to meet those costs?

A There is a program which was enacted subsequent to the Section 235 program to deal with the problem of low income families who had been in effect [177] sold a bill of goods when they purchased the house under the 235 programs.

Q That is with respect to defects existing in the house?

A That is right; that is right.

Q You said part of the function of the Commission is to recommend to Congress certain legislative suggestions as they relate to housing, I presume; is that not correct, that is part of your function?

A Yes.

Q And have you suggested or has the Commission suggested in any of its papers and submissions to Congress that the requirement that a local resolution be forthcoming before any preliminary loans may be granted by HUD, and the execution of a cooperation agreement

must be entered into before any annual contributions are submitted be eliminated from the housing program?

A Yes. The Commission on several occasions has recommended that all forms of local government veto over the operation of low income housing programs be eliminated.

Q And has it not been the fact that Congress [178] has consistently enacted that particular section since the inception of the 1937 Act?

A Well, we are making some progress in that the workable program requirement—

Q Would you answer my question?

THE COURT: That is not the question.

MR. MURRAY: Mr. Reporter, would you read the question.

THE COURT: Has Congress followed your recommendation?

That is the shortest way to ask it.

MR. MURRAY: Right.

THE WITNESS: In part, Congress has.

THE COURT: They removed the veto power? They have?

THE WITNESS: One form of veto power which was the workable program in connection with public housing and the 221(d)(3) program, those two have been removed. Those two have been removed, which was a moderate income housing program. In other respects Congress has not yet responded to the Commission's recommendation.

[179] BY MR. MURRAY:

Q 221(d)(3) is not currently funded by Congress, is that correct?

A It is being phased out, is my understanding.

Q And part of the thing that you like about Plaintiffs' proposed judgment order is that it bypasses that particular federal statute, is that not correct? It sets aside, it contemplates that it will be set aside. You did read the judgment order?

A Yes, I did.

Q And is it not a fact that that judgment order contemplates that that particular federal statute which you have just testified to, local determination, is to be set aside?

A Only in the event that at some time in the future if cooperation cannot be achieved.

THE COURT: Well, you are aware of the cooperation that has existed in the last three years in regard to placing 500 units in the suburbs; do you see any reason why that might tend to diminish?

THE WITNESS: Your Honor, I am not that [180] familiar with the local situation.

THE COURT: I mean you are aware that CHA has had authority to place 500 units in the suburbs in the last three and a half years.

THE WITNESS: Yes, I am.

THE COURT: You are aware that they have not done so.

THE WITNESS: That is right.

THE COURT: You think that might be due possibly to the lack of cooperation by the municipalities?

THE WITNESS: I would tend to think it would be.

THE COURT: All right. And you anticipate that that is going to terminate shortly, this lack of cooperation?

THE WITNESS: I have no—

THE COURT: Voluntarily?

THE WITNESS: I ordinarily would doubt it. I have no way of knowing specifically, sir.

THE COURT: Aren't you aware that this order contemplates that this Court step in where Congress has refused to do so and compel these municipalities to not do what the law [181] requires them to do? You are aware of that, aren't you?

THE WITNESS: Yes, sir.

THE COURT: All right, just so we understand what we are talking about.

BY MR. MURRAY:

Q With respect to the letters that Mr. Polikoff handed to me that the Civil Rights Commission sent to Mr.

Romney with respect to the site selection policies, do you have copies of those letters?

A Yes, I do.

THE COURT: Well, I think while he is looking for them we will take a five minute recess.

(A recess was taken.)

THE COURT: You may resume the stand, Mr. Witness.

MR. MURRAY: Mr. Court Reporter, could you please read back where we left off.

(The record was read.)

BY MR. MURRAY:

Q Do you have a copy of that letter?

A Yes, I do.

[182] Q Referring to Page 2 of that letter, do you have a copy of it, of the November 4th, 1971 letter?

A Yes.

Q The third full paragraph down, reading from the top line there in the first full sentence which reads, "The recent decision of the United States Court of Appeals for the Seventh Circuit in Gautreaux versus Romney, decided December 10th, followed by Judge Austin's order of October 1st, 1971 implementing that decision clearly illustrates that HUD has an obligation not only to avoid acting in a discriminatory fashion, but to act affirmatively to prevent housing discrimination and segregation"; that is what the letter says?

A Yes.

Q You are aware, are you not, Counsel, that the October 1, 1971 order of Judge Austin was reversed by the Seventh Circuit? You are aware of that?

A Yes.

Q Is it not a fact that the red-lining process that you testified to is no longer used?

A That is correct. It stopped in the mid-1960's.

[183] Q Is it not a fact that the site selection criteria, the current site selection criteria, applies to the FHA program currently in existence now? Is that correct—and operational?

A The lower income programs, 235, 236, the rent supplements.

Q Is that correct?

A That is right.

THE COURT: Isn't that what we are interested in, low income?

MR. MURRAY: That is assuming his observation, all programs, I am assuming—he testified, Your Honor, concerning all FHA programs. I am just getting down to the site selection criteria applies to all HUD's housing programs.

THE COURT: All right.

BY MR. MURRAY:

Q That is true, is that not correct?

A No, it does not apply to all HUD's housing programs. It applies to four lower income housing programs.

Q And those are the 235, 236, the elderly and—

[184] A Rent supplements and conventional public housing.

Q Okay, but it does apply to those four programs, is that not correct?

A Yes.

Q In the report that you made, I believe, with respect to 235, when was that published?

A June of 1971.

Q June, 1971?

THE COURT: That was when in regard to this?

BY MR. MURRAY:

Q When was the site selection criteria—when did it become effective? Do you know?

A February of this year.

Q Is it not a fact that all homes in the suburbs are available to all persons regardless of race?

A No, it is not a fact. It is a legal theory, but it has not yet been proven to be a fact.

Q Well, if anyone is denied a home based upon a race he has a cause of action under the Civil Rights Act, is that not correct?

A That is correct.

[185] THE COURT: So he must have a right that can be enforced by a court, is that right?

THE WITNESS: That is true. He can also complain to the Department of Housing and Urban Development, but our investigations, Your Honor, show that it was not a fact with respect to the 235 program. Secretary Romney conceded at Commission hearings that it was not a fact with respect to the general housing market.

MR. MURRAY: I am going to move to strike the answer to that question as not being responsive to my question, Your Honor.

THE COURT: I am going to let it stand.

MR. MURRAY: Your Honor, at this time, based upon my cross examination testimony of this witness, I move that the direct testimony and cross examination be stricken as irrelevant and immaterial to the issues.

THE COURT: The direct-cross examination?

MR. MURRAY: The direct and my cross as being—you allowed me to—

THE COURT: I understand.

MR. MURRAY: I move that that be stricken.

THE COURT: It will be stricken insofar as [186] it applies to FHA programs.

MR. POLIKOFF: Your Honor, may the testimony stand as an offer of proof?

THE COURT: It may stand as an offer of proof.

You are through with the witness?

MR. MURRAY: Yes, Your Honor.

THE COURT: Mr. O'Brien, do you have some?

MR. O'BRIEN: No, sir.

MR. POLIKOFF: I have one question, Your Honor.

REDIRECT EXAMINATION

BY MR. POLIKOFF:

Q You were asked about the limitation of the federal role in the public housing programs to funding, and you began to answer but didn't complete your answer; could you explain in what respects that role goes beyond funding?

A It goes well beyond funding to approval of every step of the process by which public housing is ultimately

produced, including tenant assignment policies of the local housing authority and site selection policies of the local housing authorities. HUD has the power to approve or disapprove of those [187] policies and others.

MR. POLIKOFF: No further questions, Your Honor.

THE COURT: You may step down.

(Witness was excused.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

EXCERPT FOR THE TRANSCRIPT OF
NOVEMBER 29, 1972

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[368] THE COURT: All right, that is what you are supposed to do in a closing argument.

MR. POLIKOFF: Professor Hauser's testimony, he was the first witness, there is a lot of population statistics that he produced into the record, but only one of them that I think we need to focus on. He said that before the year 2000, which is only 27 years away, less than one human generation, within all of our lifetimes, I hope,—

THE COURT: Thank you.

MR. POLIKOFF: Well, over 100 per cent of the census tracts, all the census tracts in the City of Chicago will be more than 30 per cent black. He took no account, when he said that, of the buffer zone; so that some indeterminate time sooner than that there is not going to be any general public housing area left in the City of Chicago. And that means, Your Honor, since your existing order is based fundamentally upon—there is no other foundation for it but the distinction between the general and the limited public housing area in Chicago—that as a practical matter, unless something is done—you remember that Professor Hauser didn't say that this was inevitable, on the contrary, he [369] expressed an optimistic opinion that this forecast could be, might be prevented from turning into a dire reality, but unless something is done it means that relief is not going to be possible within this case in our lifetime within the City of Chicago. As a practical matter, there isn't going to be any general public housing area left upon which the order can operate.

We can push, and we will, to get the 1,500 units that are in the pipeline built in the right places and in the right ways.

THE COURT: Is there any money to build them?

MR. POLIKOFF: Oh, no, Your Honor, the 1,500 are provided for from prior fiscal years, at least that is my understanding. If there is any doubt, Mr. Sabella is still here and can confirm it.

I think the 300 are new allocations in addition to the 1,500 that are—

THE COURT: Funds are going to be available for the 1,500 if we ever get 1,500 sites.

MR. POLIKOFF: That is my understanding of what HUD has consistently said in the past, that is right.

• • • •

[375] MR. POLIKOFF: Exhibit 11 gives some indication, Your Honor. Exhibit 11 is the—let me hand the exhibit to you as I refer to it, and get myself a—no, I don't think I need another copy—no, I think I do.

Exhibit 11 shows—let's take a look just at the first page, Cook County, it shows that all of the projects in Cook County are in what would be the limited public housing area, if they were in Chicago, and if you will look for a moment at the statistics, you will see that the first listed project in a census is in a census tract that is 87 per cent black. Fifteen out of fifteen occupants are black.

The second one is in a census tract 87 per cent black, 37 out of 37 occupants black.

The third one in an area that is thirty-three and a third per cent black, that would be limited public housing area in Chicago, 35 out of 35 black occupants.

The next one, 94 per cent, the next one 87 per cent census tract black, 79, 79, 79, 94— [376] and look at the occupancy figures, 117 black out of 120, 99 black out of 100, 110 black out of 116, 99 out of—

THE COURT: I am surprised, and I have gone through East Chicago Heights on many occasions, that they found one white in East Chicago Heights.

MR. POLIKOFF: They did, apparently.

THE COURT: And that they found five for East Chicago Heights, 11 in Berkeley. I think East Chicago Heights is the same percentage black as Ivory soap used

to advertise itself as 99.44/100ths per cent black. Ivory soap is supposed to be 99.44/100ths per cent pure.

MR. POLIKOFF: Well, the precise figure on East Chicago Heights, according to HUD Exhibit B is 97 per cent. It is even better than—

THE COURT: It isn't quite as pure as Ivory soap used to be.

MR. POLIKOFF: Not quite as pure as Ivory soap.

THE COURT: All right.

MR. POLIKOFF: And that is the point, Your Honor, these communities know that if they respond favorably to CHA they can in the future limit these housing projects to these all black areas; just as you have prohibited CHA from limiting them to all black areas [377] in Chicago, if CHA tries to go out into the suburbs, they similarly have to be in white areas as well as black, under your order, and these communties obviously have followed the pattern—

THE COURT: You are going to have a great deal of difficulty in finding some black areas in some of the suburbs.

MR. POLIKOFF: But the suburban areas are predominantly white as a whole, as Your Honor knows. The statistics that Professor Hauser testified to showed that. So that what has happened here is that the relatively few black pockets in the suburbs, East Chicago Heights —

THE COURT: Robbins?

MR. POLIKOFF: And Robbins is another one that is listed here. The figure for Robbins is—

THE COURT: Sections of Evanston.

MR. POLIKOFF: —98 per cent.

Evanston is a different pattern slightly, although it is one of the largest in its black population, the figure for Evanston is 16 per cent black. The—what other ones are listed here—well, the pattern, I am sure Your Honor understands and is familiar with.

The suburban area is predominantly [378] white. There are a few pockets of blacks, East Chicago Heights and Robbins being good illustrations.

For 20 years the only projects that have been put into those areas had been put into those selected black areas. The pattern duplicates the pattern you found to exist in the City of Chicago, where for 20 years the projects were similarly put exclusively in the black areas. And that, as I think you know, is why we cannot expect cooperation from the suburban areas when CHA writes to them and asks them to enter into a plan for putting those 500 units, or some other number, out into the suburban area.

THE COURT: Has is ever occurred to you, Mr. Polikoff, that some suburban areas welcome all who are economically able to live in those suburbs regardless of their color?

MR. POLIKOFF: This is not a question of what individual people in suburban areas may do, and it is not a question, as Your Honor has intimated before, of economics.

The indication from this exhibit is that the housing authorities have limited the location of the projects to the black areas. There are many, many white areas out in suburbia equally poor with [379] the black areas, the census statistics show that. They don't have the housing projects. Why not? Your Honor can draw the inference. This is not—

THE COURT: I can draw another inference: You are aware, of course, that the income, the local taxes on housing areas is minimal compared to those that are not local housing areas that are taxpayer owned, and they are struggling to maintain the facilities that are available for the number of people who live there and who are able to pay their taxes, but you propose to move in those that wouldn't be paying any taxes, giving a village without any additional income additional responsibilities for additional people.

MR. POLIKOFF: Two observations with respect to that, Your Honor: First one is, that as you said in your opinion of February of 1969, and as the law generally makes clear, the pursuit of benign non-racial objections or concerns, if it has the effect of discriminating or preventing the Court from remedying the discrimination does

not reduce the impact of that discrimination or make it any the less amenable to judicial process.

THE COURT: Well, I am talking about all low income housing, white or black, and as I recall the [380] last—

MR. POLIKOFF: I understand that. I am saying that assuming that the sole reason for non-cooperation with CHA is the perception that it would be physically unwise to let them come in, if that is the only reason, if the operation of that—

THE COURT: Let's not call it racial necessarily, because as I recall it, the last figures that are available, the waiting list was three to one white.

MR. POLIKOFF: I am coming to that point, too, Your Honor.

The effect, as you found in 1969—

THE COURT: You may call it economical, but let's get away from that figure "racial".

MR. POLIKOFF: The effect of what you found—well, I hope you don't misunderstand my posture here.

I think on this question we are on the same side of the fence. I am saying that—and I think you said in 1969 that the effect of the policy in Chicago was double, not single. One of the effects was to discriminate against whites, and it discriminated against whites because in effect the policy denied whites housing opportunities because they chose not to live in all black neighborhoods, which was the only option given them, all black neighborhoods and all [381] black projects.

And you can say the same thing about the effects in the suburbs; look at Plaintiffs' Exhibit 11. There is only one project on the front page here that has more than one white, and that is a leasing project in Evanston. Everybody else has got zero white except in Chicago Heights, as you noted, one white family along with 117 black families live in that project.

Now, the effect, whatever the reason and the motivation, taxes or anything else, the effect, as you said in 1969, of this pattern in Cook County, is the same as the effect of that pattern on whites in Chicago. I am not saying that it is a policy that is designed to discriminate on racial grounds in any subjective motivational sense. I don't believe Your Honor understands that any such showing is required. I am going to refer you to a couple of cases—

THE COURT: Of course I agree with you on that, that it is not required.

MR. POLIKOFF: And if it is not required, then we see the discrimination here in effect that you were talking about against whites and not blacks, and not because anybody out there has got it in for [382] poor whites and wants to deny them housing opportunities, but because the result of the operation of the factors that have produced this policy has been to deny whites in the suburbs low income housing opportunities.

It has also been—the second effect you mentioned in 1969—it has also been to deny blacks low income housing opportunities in any but non-black neighborhoods, so I am agreeing with you that there is that double discrimination.

I also want to add a footnote, and that is this fiscal point about no taxes is overdone. CHA's 1971 annual report, which is in the record of this case, CHA has filed it with one of it's quarterly reports to you, says, and I am quoting. "The CHA receives no tax funds from the City of Chicago. Development funds are obtained in the private market. Temporary financing is provided by short term notes," and it goes on to say where those come from. "CHA receives federal funds to meet service costs on 40 year bonds," the ones that Mr. Sabello was testifying about.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed January 29, 1973]

[Title Omitted in Printing]

MOTION

NOW COME plaintiffs, by their attorneys, and move the Court to enter an order,

(1) Deferring ruling on the proposed final judgment orders filed on April 26, 1972, by HUD and on September 25, 1972, by plaintiffs;
(2) Determining that it is necessary and appropriate for the Court to consider a metropolitan plan for relief in this cause; and
(3) Providing for the preparation of such plans by HUD and CHA so that there will be no unnecessary delay in the implementation of the ultimate orders entered by the Court.

A proposed form of such order is attached hereto and a memorandum in support of this motion is tendered herewith.

Respectfully submitted,

/s/ Alexander Polikoff
ALEXANDER POLIKOFF
One of the Attorneys
for Plaintiffs

January 29, 1973

Alexander Polikoff
109 North Dearborn Street
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641-5570

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed January 29, 1973]

[Title Omitted in Printing]

PROPOSED ORDER

This matter coming on to be heard on the proposed judgment order and related documents filed on April 26, 1972, by defendant George W. Romney, Secretary of the Department of Housing and Urban Development ("HUD"); on the proposed judgment order and related documents filed on September 25, 1972, by plaintiffs; on evidence heard in this cause on November 27-29; 1972; and on plaintiffs' motion filed on January 29, 1973, for a ruling on the propriety of considering metropolitan relief; and,

The Court having heard the presentations of the parties, considered the evidence and being fully advised, the Court now makes the following findings of fact, reaches the following conclusions of law, and enters the following orders:

Findings of Fact

1. According to the United States Census ("Census") for 1970, 32.7% of the population of the City of Chicago was Black in that year. (Tr. 85.)

2. According to the 1960 and 1970 Censuses, within the decade from 1960 to 1970 the Black population of the City of Chicago increased by 35% while the White population diminished by 18%. (Tr. 136 of September 28, 1972.)

3. According to the 1950 Census, 13.6% of the population of the City of Chicago was Black in that year. (Tr. 85.)

4. Assuming that the rate of changes in Black and White population, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1984 the population of the City of Chicago will be over 50% Black, by 1990 58% Black, and by the end of the century 70% Black. (Tr. 86.)

5. According to the 1970 Census the student population of the public schools of the City of Chicago was over 56% Black in that year while less than 1/3 of the general population was Black. (Tr. 87.) The proportion of Blacks in the public school population is much greater than the proportion of Blacks in the general population of the City of Chicago because a higher proportion of White families are elderly, childless or have children enrolled in non-public schools. (Tr. 87.)

6. According to Census figures the percent of census tracts in the City of Chicago having 30% or more Black population was 23.1% in 1960 and 34% in 1970.

7. Assuming that the rate of changes in Black and White population of census tracts, respectively, during the decade from 1960 to 1970 in Chicago continue, by 1990 74% of the census tracts in Chicago will be 30 percent or more Black, and well before 2000 every census tract in Chicago will have at least a 30% Black population. (Tr. 88-89.)

8. Based on such assumptions, there will be no General Public Housing Area (as defined in this Court's judgment order of July 1, 1969) in the City of Chicago at some date well before the year 2000. (Tr. 88-89.)

9. According to the 1970 Census, Blacks comprise about 17% of the population of the Chicago Metropolitan area. (Tr. 95.)

Conclusions of Law

1. The Court has not merely the power but also the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past site selection procedures of CHA and HUD. *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965).

2. In this case the Court's duty will not be discharged by a decree which prohibits continued use of discriminatory site selection procedures in the future; the Court has a duty to eliminate the discriminatory effects of the past employment of such procedures insofar as that is possible.

3. In performing such remedial duty the Court is obligated to take such action as will achieve "the greatest

possible degree of desegregation, taking into account the practicalities of the situation," *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 37 (1971), and the Court "may and should consider the use of all available techniques." *Davis* v. *Board of School Comm'rs.*, 402 U.S. 33, 37 (1971).

4. The scope of the Court's equitable powers to remedy past wrongs is broad, notwithstanding that the necessary remedies may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some. *Swann, supra*, 402 U.S. at 28.

5. The vitality of these remedial principles is not sapped because granting full relief would take a long time or require further litigation. The Court's duty is to eliminate the past effects of the discriminatory site selection procedures insofar as possible, "root and branch." *Green* v. *County School Board*, 391 U.S. 430, 439 (1968).

6. Although the factual situations differ among school, housing, anti-trust and other categories of cases, these constitutional remedial principles apply generally. Relief must be directed to that which is necessary and appropriate in the public interest to "*eliminate the effects*" of illegal conduct. *Ford Motor Co.* v. *United States*, 405 U.S. 562, 573, n. 8 (1972) (emphasis in original). The Court's duty is to compel wrongdoers to act in a manner that will, so far as practicable, cure the ill-effects of illegal conduct, and such action is not limited to prohibition of the proven means by which the evil was accomplished. *United States* v. *United Gypsum Co.*, 340 U.S. 76, 88-9 (1950).

7. In the circumstances of this case, particularly the circumstance that the General Public Housing Area in the City of Chicago (as defined in this Court's judgment order of July 1, 1969) will cease to exist at some time well short of the next 27 years, it is not possible for the Court to perform its remedial duty solely within the geographic limits of the City of Chicago. This is one of the "practicalities of the situation" that the Court is obligated to take into account. *Swann, supra*, 402 U.S. at 37.

8. Under such circumstances, the Court has the power and the duty to consider a metropolitan remedy for re-

lief in this case. Local political boundary lines are matters of convenience, not sovereignty, and the Court has the power to bridge such boundary lines where necessary to perform its duty to remedy the past effects of federal constitutional wrongs. *Reynolds* v. *Simms*, 377 U.S. 533, 575 (1964); *Haney* v. *County Board of Education of Sevier County*, 410 F.2d 920, 924-25 (8th Cir. 1969); *Jenkins* v. *Township of Morris School District*, 279 A.2d 619, 628 (S.Ct. N.J. 1971).

9. The affirmative obligation to seek means of disestablishing state-imposed housing segregation must be shared by all agencies or agents of the state who are charged by law with, and who exercise, official housing functions. *Franklin* v. *Quitman County Bd. of Educ.*, 288 F.Supp. 509, 519 (N.D. Miss. 1968). Accord: *Lee* v. *Macon County Bd. of Educ.*, 267 F.Supp. 458, 478-49 (M.D. Ala. 1967) (three judge court), aff'd. sub nom. *Wallace* v. *United States*, 389 U.S. 215 (1967); *United States* v. *Texas*, 321 F.Supp. 1043, 1056-1057 (E.D. Tex. 1970), 330 F. Supp. 235 (E.D. Texas 1971), modified and aff'd, 447 F.2d 441 (5th Cir. 1971).

10. The fundamental guarantee of equal treatment at the hands of the State cannot be thwarted by fragmentation of decision making. The United States Constitution recognizes no governing unit except the federal government and the state. *Hall* v. *St. Helena Parish School Bd.*, 197 F.Supp. 649, 658 (E.D. La. 1961) (three judge court), aff'd, 368 U.S. 515 (1962).

11. The Court is not now called upon to decide whether to order a metropolitan remedy in this case; the Court is only called upon to decide at this time whether it has the power and the duty to consider such a remedy. However, the Court notes that all parties to this case have conceded, at least in principle, that a metropolitan remedy is desirable. (E.g., as to HUD, Tr. 4, 6-7, February 22, 1972; as to CHA, Memorandum of December 21, 1971, p. 27.)

WHEREFORE, IT IS HEREBY ORDERED:

(1) The Court hereby determines that it is necessary and appropriate to consider a metropolitan plan to remedy

the past effects of the unconstitutional site selection procedures employed by CHA and approved and funded by HUD.

(2) The Court will keep under advisement the proposed judgment orders of the parties previously filed and will defer a ruling thereon at this time.

(3) Within 45 days from the date hereof HUD and CHA shall, separately or together, file with the Court and serve upon counsel for plaintiffs their recommendations for comprehensive metropolitan-wide relief in this case, including a form of proposed judgment order or orders designed to provide such relief. Such recommendations shall also include a designation of such additional parties, if any, as in the opinion of HUD or CHA, as the case may be, should be joined as additional parties to the action to make the proposed relief effective. In the case of HUD such recommendations shall include such consideration of programs other than the conventional public housing program as in HUD's judgment may appropriately be employed to effect full relief in this case.

(4) The Court is of the opinion that paragraph (1) of the ordering portion of this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from such portion of this order may materially advance the ultimate termination of this litigation, all as provided in 28 U.S.C. § 1292(b).

ENTER:

[Not signed]
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Title Omitted in Printing]

[Filed September 30, 1974]

REPORT NO. 14 TO THE COURT
PURSUANT TO ORDER OF APRIL 16, 1971

CHA ACTIVITIES—
FAMILY PUBLIC HOUSING SITES

1. Project ILL-2-85

It was stated in Report No. 13 that the construction of 63 units in the original Project ILL-2-85 have been assigned Project Nos. ILL-2-90, 91, 93 and 94. Four separate construction contracts were awarded to Teddy Bear Builders (2), Ruby Construction Co. and M. L. Peterson for this work. These contract awards have now been approved by the Area Office of the Department of Housing and Urban Development and Notice to Proceed issued by the Chicago Housing Authority. Actual construction has been started on these contracts. The Area Office of the Department of Housing and Urban Development has completed the Special Environmental Clearance for the 56 substitute sites submitted for the residual units in the ILL-2-85 Program. Thirty-eight (38) sites were approved and an additional 11 sites are under further study. (Copy of letter from HUD, dated August 23, 1974, attached as "Exhibit A.")

2. Projects ILL-2-86 and ILL-2-87

Development Programs have been submitted to the Area Office of the Department of Housing and Urban Development but have not been approved. Forty-nine (49) sites representing 170 units have been submitted for environmental clearance. Chicago Housing Authority, at the present time, has no funding for these programs.

3. Section 23—Leasing Program and Section 8 of Housand Community Development Act of 1974

In conformance with the Department of Housing and Urban Development's requirement that prior to the submission of an application for revised Section 23 Housing Assistance Payments Program the Local Authority must meet with the Department of Housing and Urban Development in a pre-application conference, the Chicago Housing Authority met with officials of the Area Office, Department of Housing and Urban Development, on July 17, 1974. At this conference Chicago Housing Authority was advised that present policy will not permit the assigning of additional units to any Local Housing Authority that is not 100% leased. Chicago Housing Authority is now advised that there are 450 units available in the Section 23 Program. Accordingly, Chicago Housing Authority, by its letter of September 10, 1974 to the Director, Area Office of the Department of Housing and Urban Development, has requested that the Area Office of the Department of Housing and Urban Development waive the 100% occupancy policy and permit Chicago Housing Authority to submit its application. Under joint memorandum issued on August 22, 1974 by Sheldon B. Lubar, Assistant Secretary-Commissioner, Housing Production and Mortgage Credit, and H. R. Crawford, Assistant Secretary for Housing Management, new construction and substantial rehabilitation application and projects would be subject to the provisions of Section 8 of the Housing and Community Development Act. It is anticipated that specific regulations under Section 8 of this Act will be published on or about October 1, 1974. As soon as procedures are established, Chicago Housing Authority will submit an application for both existing and new construction provided under the Housing and Community Development Act of 1974.

CHA ACTIVITIES—INFORMING THE PUBLIC RE THE NEW PUBLIC HOUSING PROGRAM

No new developments since Report No. 10, dated September 30, 1974.

CHA ACTIVITIES—AGREEMENT WITH HOUSING AUTHORITY OF COOK COUNTY

No new developments since Report No. 8, dated March 30, 1973.

Respectfully submitted,

/s/ Harry J. Schneider
HARRY J. SCHNEIDER
Executive Director

September 30, 1974

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed February 25, 1975]

[Title Omitted in Printing]

ORDER

This matter coming on to be heard on the motion of plaintiffs to add parties defendant and to file a supplemental complaint, and the Court having heard the presentations of the parties and being fully advised,

IT IS HEREBY ORDERED:

1. The Housing Authority of Cook County, DuPage County Housing Authority, Housing Authority of the County of Lake, Housing Authority of the County of McHenry, Housing Authority of the Village of Oak Park, Maywood Housing Authority, Waukegan Housing Authority, Housing Authority of North Chicago, Aurora Land Clearance Commission, Housing Authority of Elgin, Housing Authority of Joliet, Illinois Housing Development Authority, Northeastern Illinois Planning Commission and Frank A. Kirk, as Director of the Department of Local Government Affairs of the State of Illinois, be and they hereby are made parties defendant in this consolidated cause;

2. Leave is hereby granted to plaintiffs to file instanter the supplemental complaint referred to in said motion of plaintiffs;

3. Defendants Chicago Housing Authority and James T. Lynn shall answer or otherwise plead to the supplemental complaint on or before March 26, 1975, and the newly added defendants shall answer or otherwise plead to the supplemental complaint within the time provided in Rule 12(a) of the Federal Rules of Civil Procedure; and

4. Plaintiffs shall cause copies of the supplemental complaint and this order to be served as promptly as pos-

sible upon the newly added defendants in the manner provided in Rule 4 of the Federal Rules of Civil Procedure.

ENTER:

/s/ R. B. Austin
R. B. AUSTIN
Judge

Date: February 24, 1975

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

[Filed February 25, 1975]

No. 66 C 1459
66 C 1460

(Consolidated)

DOROTHY GAUTREAUX, ET AL., PLAINTIFFS

v.

CHICAGO HOUSING AUTHORITY, a corporation, HARRY B. SCHNEIDER, Executive Director, Chicago Housing Authority, JAMES T. LYNN, Secretary, Department of Housing and Urban Development, HOUSING AUTHORITY OF COOK COUNTY, a corporation, DUPAGE COUNTY HOUSING AUTHORITY, a corporation, HOUSING AUTHORITY OF THE COUNTY OF LAKE, a corporation, HOUSING AUTHORITY OF THE COUNTY OF MCHENRY, a corporation, HOUSING AUTHORITY OF THE VILLAGE OF OAK PARK, a corporation, MAYWOOD HOUSING AUTHORITY, a corporation, WAUKEGAN HOUSING AUTHORITY, a corporation, HOUSING AUTHORITY OF NORTH CHICAGO, a corporation, AURORA LAND CLEARANCE COMMISSION, a corporation, HOUSING AUTHORITY OF ELGIN, a corporation, HOUSING AUTHORITY OF JOLIET, a corporation, ILLINOIS HOUSING DEVELOPMENT AUTHORITY, a body politic and corporate, NORTHEASTERN ILLINOIS PLANNING COMMISSION, a body politic and corporate, and FRANK A. KIRK, Director of the Department of Local Government Affairs of the State of Illinois, DEFENDANTS

SECOND SUPPLEMENTAL COMPLAINT

NOW COME PLAINTIFFS, by their attorneys, and for their second supplemental complaint state as follows:

1. Each of defendants HOUSING AUTHORITY OF COOK COUNTY, DUPAGE COUNTY HOUSING AUTHORITY, HOUSING AUTHORITY OF THE COUNTY OF LAKE, HOUSING AUTHORITY OF THE COUNTY OF MCHENRY, HOUSING AUTHORITY OF THE VILLAGE OF OAK PARK, MAYWOOD HOUSING AUTHORITY, WAUKEGAN HOUSING AUTHORITY, HOUSING AUTHORITY OF NORTH CHICAGO, AURORA LAND CLEARANCE COMMISSION, HOUSING AUTHORITY OF ELGIN, and HOUSING AUTHORTIY OF JOLIET, is a municipal corporation organized and existing under the laws of the State of Illinois. Together with the defendant CHICAGO HOUSING AUTHORITY, such housing authorities constitute all of the housing authorities organized and existing within the area commonly known as the Chicago Metropolitan Area, being the Chicago Standard Metropolitan Statistical Area, consisting of the Illinois counties of Cook, DuPage, Lake, McHenry, Kane and Will, as such area is defined by the Bureau of the Census.

2. Defendants HOUSING AUTHORITY OF COOK COUNTY, DUPAGE COUNTY HOUSING AUTHORITY, HOUSING AUTHORITY OF THE COUNTY OF LAKE and HOUSING AUTHORITY OF THE COUNTY OF MCHENRY have as their "normal" areas of operation the Counties of Cook, DuPage, Lake and McHenry, Illinois, respectively, exclusive of any city, village or incorporated town within such counties within which another housing authority exists. Defendants HOUSING AUTHORITY OF THE VILLAGE OF OAK PARK and MAYWOOD HOUSING AUTHORITY have as their "normal" areas of operation the cities of Oak Park and Maywood, Illinois, respectively, which cities are located in the County of Cook, Illinois. Defendants WAUKEGAN HOUSING AUTHORITY and NORTH CHICAGO HOUSING AUTHORITY have as their "normal" areas of operation the cities of Waukegan and North Chicago, Illinois, respectively, which cities are located in the County of Lake, Illinois. Defendants AURORA LAND CLEARANCE COMMISSION and HOUSING AUTHORITY OF ELGIN have as their "normal" areas of operation the cities of Aurora and Elgin, Illinois, respectively, which cities are located in the County of Kane, Illinois. Defendant HOUSING AUTHORITY OF JOLIET has as its "normal" area of operation the city of Joliet, Illinois, which city is located in the County of Will, Illinois. In addition to such "normal" areas of operation each of the defendant housing authorities, including the CHICAGO HOUSING AUTHORITY, (i) may exercise any or all of its powers jointly with any other housing authority or authorities for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the "normal" area of operation of any one or more of them, and (ii) may operate outside its "normal" area of operation by contract with another housing authority or, subject to conditions set out in Illinois Revised Statutes, chapter 67½, section 27c, by contract with a public body not within the "normal" area of operation of another housing authority.

3. Defendant ILLINOIS HOUSING DEVELOPMENT AUTHORITY is a body politic and corporate organized and existing under the laws of the State of Illinois.

4. Defendant NORTHEASTERN ILLINOIS PLANNING COMMISSION is a body politic and corporate organized and existing under the laws of the State of Illinois.

5. Defendant FRANK A. KIRK is the Director of the Department of Local Government Affairs of the State of Illinois, an executive agency of the State of Illinois.

6. On August 26, 1974, the United States Court of Appeals for the Seventh Circuit issued its opinion in Nos. 74-1048 and 74-1049, being appeals from orders entered in this case. On September 30, 1974, the Court of Appeals entered an order denying a petition for rehearing respecting said appeals. On or about October 8. 1974, the Court of Appeals issued its mandate respecting said appeals and the same was delivered to the Clerk of this Court.

7. Among other things, said opinion of the Court of Appeals and order denying rehearing determine and provide:

(a) It is necessary and equitable that a remedial plan to be effective in this consolidated case must be on a suburban or metropolitan area basis (slip opinion of August 26, 1974, p. 10);

(b) This Court's order of September 11, 1973, is remanded for additional evidence and further consideration in light of said opinion and order of the Court of Appeals and of the opinion of the Supreme Court of the United States in *Milliken* v. *Bradley*, —— U.S. ——, to wit: the adoption of a comprehensive meteropolitan area plan to disestablish and remedy the effects of the segregated public housing system in Chicago by increasing the supply of dwelling units as rapidly as possible (*id.* at 15; order on rehearing, p. 2); and

(c) The validity of any specific metropolitan area plan is left for this Court to consider upon remand. (Slip Opinion of August 26, 1974; p. 10)

8. As this Court has previously determined (*Gautreaux* v. *Chicago Housing Authority*, 342 F.Supp. 827, at 829), all agencies and agents of the State of Illinois possessing housing powers share an affirmative obligation to assist in remedying the effects of the segregated public housing system in Chicago except to the extent compelling governmental interests precludes such assistance. Each of the defendants newly added as such by this Second Supplemental Complaint possesses such housing powers as follows:

(a) Under the laws of the State of Illinois each of the defendant housing authorities has the power and the duty, among others, to engage in low rent housing projects, which activity is declared by such laws to be a governmental function essential to the public interest.

(b) Under the laws of the State of Illinois the defendant ILLINOIS HOUSING DEVELOPMENT AUTHORITY has the power and the duty, among others, to assist in the planning and development of

housing for low-income persons throughout the State of Illinois. To that end various powers are conferred upon the Development Authority by the provisions of Illinois Revised Statutes, chapter 67½, section 301 et seq., and other Illinois laws.

(c) Under the laws of the State of Illinois the defendant NORTHEASTERN ILLINOIS PLANNING COMMISSION has the power and the duty, among others, to assist in planning, including planning for housing, for the Chicago Metropolitan Area, as such area is defined by the Bureau of the Census. To that end various powers are conferred upon the Planning Commission by the provisions of Illinois Revised Statutes, chapter 85, section 1101 et seq., and other Illinois laws.

(d) Under the laws of the State of Illinois defendant KIRK, as Director of the Department of Local Government Affairs, exercises supervisory powers over housing authorities organized and existing under the laws of the State of Illinois and has the power and the duty, among others, to assist in the planning and development of housing for low-income persons throughout the State of Illinois. To that end various powers are conferred upon the Department by the provisions of Illinois Revised Statutes, Chapter 127, section 63b14 et seq., and other Illinois laws.

There is no compelling governmental interest which dictates that any of such newly added defendants should not participate in carrying out and implementing the judgment orders of the Court heretofore entered in this consolidated cause and in the development and implementation of a comprehensive metropolitan area plan, for the adoption of which the U.S. Court of Appeals for the Seventh Circuit ordered a remand to this Court, as hereinabove alleged.

9. On April 11, 1968, Public Law 90-284 was signed into law by the President of the United States. Under the provisions thereof, particularly Sections 801 and 808 thereof, 42 U.S.C.A. §§ 3601, 3608, under the remand

ordered by the Court of Appeals for the Seventh Circuit as hereinabove alleged, and by reason of the conduct, previously determined in this consolidated cause to be unlawful, of the predecessors in office of defendant JAMES T. LYNN, said defendant LYNN, as Secretary of the Department of Housing and Urban Development, has a duty to participate in carrying out and implementing the judgment orders of the Court heretofore entered in this consolidated cause and in the development and implementation of a comprehensive metropolitan area plan, for the adoption of which said remand to this Court was ordered.

10. On August 22, 1974, the Housing and Community Development Act of 1974, Public Law 93-383 (the "Act") was signed into law by the President of the United States. Among other things, the Act continues in effect previously established public housing programs and establishes a new lower-income housing assistance program. The purpose of such new program is "aiding lower-income families in obtaining a decent place to live and . . . promoting economically mixed housing," and for such purpose so-called "assistance payments" are authorized to be made with respect to existing, newly constructed and substantially rehabilitated housing in which some or all of the units shall be available for occupancy by lower-income families. Pursuant to annual contributions contracts between the Secretary and public housing agencies, such agencies may also make assistance payments to owners of existing housing in which some or all of the units shall be available for occupancy by lower-income families. As defined in the Act, "public housing agency" includes the defendant ILLINOIS HOUSING DEVELOPMENT AUTHORITY, the Department of Local Government Affairs of the State of Illinois and the defendant housing authorities, and "lower-income families" includes members of the plaintiff class.

WHEREFORE, plaintiffs pray:

(a) For the entry of a declaratory judgment that there is no compelling governmental reason why the defendants newly added as such by this Second Supplemental Complaint should not participate in carrying out and implementing the judgment orders of the Court heretofore entered in this consolidated cause and in the development and implementation of a comprehensive metropolitan area plan to disestablish and remedy the effects of the segregated public housing system in Chicago by increasing the supply of dwelling units as rapidly as possible.

(b) For the entry of an order directing the defendant NORTHEASTERN ILLINOIS PLANNING COMMISSION to prepare such a comprehensive metropolitan area plan in cooperation with such of the other defendants as may desire to participate in such preparation, utilizing the lower-income housing assistance program established by Public Law 93-383 as well as previously established public housing programs, and submit the same for the Court's consideration within such period as the Court may designate.

(c) Following the Court's adoption of a comprehensive metropolitan area plan, for the entry of an order directing the appropriate defendants to implement the same as rapidly as possible; and

(d) For the entry of an order granting plaintiffs such other and further relief as the Court may deem just and equitable.

ALEXANDER POLIKOFF
MILTON I. SHADUR
BERNARD WEISBERG
CECIL C. BUTLER
MERRILL A. FREED
ROBERT J. VOLLEN

Attorneys for Plaintiffs

By: /s/ Alexander Polikoff
ALEXANDER POLIKOFF

February 5, 1975

Alexander Polikoff
109 North Dearborn Street
Chicago, Illinois 60602
(312) 641-5570

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed May 6, 1975]

[Title Omitted in Printing]

RECOMMENDATION OF MASTER

In the proceedings being conducted pursuant to the Memorandum Opinion and Reference Order of the Honorable Richard B. Austin, dated November 7, 1974, the plaintiffs have appeared before me by counsel and requested that I recommend the entry of an order in the form attached hereto. The representations advanced in support of plaintiffs' request are contained in the report of the proceedings held before me this day. The Department of Housing and Urban Development has represented to me by counsel that it does not object to the entry of the proposed order; The Chicago Housing Authority has stated its objection for the record.

Wherefore, being of the opinion that the entry of the proposed order would further the objectives of the judgment orders previously entered in this consolidated case, I do hereby recommend that an order in the form attached hereto be entered by the District Court. The foregoing is an interim recommendation only and is not the final Report of the Special Master called for by the reference order of November 7, 1974.

Respectfully submitted.

/s/ Olga Jurco
Magistrate, United States
District Court

Dated: May 5, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

[Filed May 8, 1975]

[Title Omitted in Printing]

ORDER

This matter coming on to be heard on the recommendations of the Master to whom this matter has previously been referred for the entry of a proposed order, and

The Court having determined that the proposed order is appropriate and in furtherance of the purposes of the judgment orders previously entered in this consolidated cause,

IT IS HEREBY ORDERED;

(1) The judgment order entered herein on September 11, 1973, which directs the defendants, Department of Housing and Urban Development ("HUD") to use its best efforts to cooperate with the Chicago Housing Authority to increase the supply of low-rent public housing in accordance with laws, applicable regulations and the judgment order entered herein on July 1, 1969, as amended, shall not be interpreted to preclude the defendant Housing and Urban Development from approving a Housing Assistance Plan filed with it by the City of Chicago pursuant to the Housing and Community Development Act of 1974 if such Plan provides that,

(a) Not less than 60% of the funds made available by HUD for annual contributions contracts and housing assistance payments contracts for use in the City of Chicago pursuant to Section 8 of Section 201(a) of the Housing and Community Development Act of 1974 shall be allocated for non-elderly housing;

(b) Not less than 60% of the housing units provided by the funds allocated under paragraph (a) preceding (whether newly constructed, substantially rehabilitated or existing) shall be physically located within the General Public Housing Area as defined in the Court's judgment order of July 1, 1969, as amended, and shall conform to the provisions of Article III.C, D and E and Article IV of said judgment order (except that 60% shall replace 75% in Article III.C and D and Article III.B shall not apply) as though they were Dwelling Units thereunder and had been or were to be made available by or through the Chicago Housing Authority; and

(c) Not less than 50% of the housing units allocated under paragraph (b) preceding shall be made available for occupancy by members of the plaintiff class in accordance with orders previously entered herein.

(2) Except as and to the extent specifically provided in this order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect.

(3) This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed housing developments designed to achieve results consistent with judgment orders previously entered herein, material changes in conditions existing at the time of this order or any other matter.

ENTER:

/s/ Richard B. Austin
Judge,
United States District Court

Dated: May 5, 1975

SUPREME COURT OF THE UNITED STATES

No. 74-1047

CARLA A. HILLS, Secretary of Housing and Urban Development, PETITIONER

v.

DOROTHY GAUTREAUX, ET AL.

ORDER ALLOWING CERTIORARI Filed May 12, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 594998 75